

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
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Plaintiff,	:
	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

NOTICE OF MOTION FOR ENTRY OF AN ORDER (I) (A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS

PLEASE TAKE NOTICE that, upon the accompanying declaration and memorandum of law in support of the motion by Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, the Receiver will move before the Honorable Brian M. Cogan, United States District Judge for

the United States District Court for the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for entry of an order (I) (a) authorizing the Receiver to sell the Receivership's rights in and to LC Energy Operations LLC and/ or its assets ("**LC Energy**") free and clear of all liens, claims, encumbrances and other interests; (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse and (II) approving the sale of LC Energy free and clear of all liens, claims, encumbrances and other interests (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be (i) made in writing; (ii) if by a party, electronically filed with the District Court; or (iii) if by a non-party, electronically mailed to the Receiver, at her e-mail address, platinumreceiver@otterbourg.com, so as to be actually received no later than **December 20, 2018**.

PLEASE TAKE FURTHER NOTICE that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion without further hearing or notice.

Dated: December 6, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein

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*Attorneys for Melanie L. Cyganowski, as
Receiver*

**UNITED STATES DISTRICT COURT
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PLATINUM CREDIT MANAGEMENT, L.P.;	:
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JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

DECLARATION OF MELANIE L. CYGANOWSKI, AS RECEIVER, IN SUPPORT OF HER MOTION FOR ENTRY OF AN ORDER (I) (A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P.,

Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*”).

2. I submit this declaration in support of my motion for an order (I) (a) authorizing me to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Operations LLC and/ or its assets (“*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b) authorizing me to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof (the “*LC Energy Claims Procedures*”) and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “*Bidding Procedures*”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “*Motion*”).

I.

PRELIMINARY STATEMENT

3. Through the Motion I request two forms of relief:

First, entry of an order (the “*Procedures Order*”), attached hereto as Exhibit A, which, *inter alia*, (i) authorizes me to sell the Receivership’s rights in and to LC Energy free and clear of all Encumbrances and (ii) approves the Bidding and LC Energy Claims Procedures in connection with the Sale.

Second, after I select a Successful Bidder (defined in the Bidding Procedures) and serve notice on all interested parties of the material provisions of the proposed Sale and provide an opportunity to object to the Sale in accordance with the approved Procedures, I request entry of an order (the “*Sale Approval Order*”) approving the sale of LC Energy free and clear of all

Encumbrances.

4. LC Energy, an indirect subsidiary of Receivership Entity PPCO, owns the Goldstar Coal Mine located in Green County, Indiana (the “*Mine*”). While the mine is idle, it is near-operational, with access, according to independent reports, to 27.4 million tons of recoverable thermal coal. The Mine thus presents an attractive investment opportunity to realize significant returns. Nonetheless, consistent with this Court’s directive that I prudently wind-down the Receivership Entities and dispose of their assets in a manner that safely returns to stakeholders what value can be salvaged, I concluded, in my business judgment, that a sale of LC Energy free and clear of all Encumbrances is the most prudent course of action. Selling LC Energy now through the Procedures will not only maximize the value of LC Energy but will cease the incurrence of approximately \$80,000-\$110,000 per month to preserve the value of the Mine.

5. While a decision to pursue the Sale was made some time ago, my professionals and I were forced to devote a meaningful amount of time engaging with LC Energy’s purported lien and claim holders whose Encumbrances otherwise diminish the value of LC Energy. While my team spent months locating and negotiating with certain of these purported lienholders to satisfy the Encumbrances otherwise impairing the value of LC Energy, they were unable to resolve any of the alleged Encumbrances on LC Energy’s assets. In light of the positions taken by certain recalcitrant claimholders, I determined that maximizing the value of LC Energy could only be achieved through a sale process that allowed LC Energy to be sold free and clear of the competing liens and claims against its assets while providing all asserted lien and claim holders with a single forum in which to assert the priority and amount of their alleged claims.

6. My decision to consummate the Sale represents a reasonable exercise of my business judgment and, accordingly, the Sale should be approved. Upon entry of the Procedures

Order, I will commence a comprehensive process to market LC Energy. The open and fair auction and Sale process contemplated by the Bidding Procedures will ensure that I receive the highest or otherwise best value available by allowing the market to determine the purchase price for LC Energy. At the same time, the LC Energy Claims Procedures allow for a single and convenient forum in which to sort out the competing claims against LC Energy's assets. Based on the forgoing, the reasons set forth below and those set forth in the accompanying memorandum of law in support of the Motion, the Motion should be granted.

II.

BACKGROUND

A. PPCO's Acquisition of Lily Group

7. On February 16, 2012, PPCO provided Lily Group, Inc. ("**Lily Group**") – an entity founded to develop, operate and open access to a known coal reserve known as the Landree Mine in Greene County and Sullivan County, Indiana – with a \$13 million loan pursuant to a Note and a Note Purchase Agreement (the "**Loan**").

8. To collateralize the Loan, PPCO acquired a lien interest in the Mine (the "**Mortgage**") and was granted a security interest in most of Lily's personal property mineral rights and lease rights, except lease rights for: (1) surface land owned by the Indiana Department of Natural Resources used as a coal holding facility and for a waste disposal plot (the "**DNR Lease**"); (2) a railroad siding owned by the Indiana Railroad (the "**IRR Sidetrack Lease**"); and (3) mineral rights owned by Indiana Railroad for a small amount of coal (the "**IRR Coal Lease**") (collectively, the "**Non-Collateralized Leases**").

9. On September 23, 2013 (the "**Petition Date**"), Lily Group filed a voluntary petition for chapter 11 relief in the United States Bankruptcy Court for the Southern District of

Indiana, Terre Haute Division (the “**Bankruptcy Court**”). See case number 13-81073 (the “**Chapter 11 Case**”).

10. Shortly after the Petition Date, PPCO assigned the Loan to LC Energy, an entity created and wholly owned, albeit indirectly, by Receivership Entity PPCO. LC Energy subsequently extended postpetition financing to Lily Group in the approximate amount of \$715,000 (the “**DIP Loan**”). In consideration for the DIP Loan, LC Energy was granted a super-priority lien and claim against all of Lily Group’s assets pursuant to an order of the Bankruptcy Court. See Bankruptcy Court Docket No. 34 (*Interim Order Authorizing Debtor to Utilize Cash Collateral on an Interim Basis; Authorizing Debtor to Enter into Debtor-In-Possession Financing Agreement; and Providing Adequate Protection to Other Secured Creditors*), ¶¶ 1.2-1.3.

11. On February 28, 2014, the Bankruptcy Court entered the *Order Pursuant to 11 U.S.C. §§ 363 and 365 (I) Approving the Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims, Interests, and Encumbrances with Valid Liens to Attach to Proceeds of Sale; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Certain Related Relief* (the “**363 Sale Order**”) pursuant to which it approved the sale of substantially all of Lily Group’s assets (the “**Acquired Assets**”) to LC Energy free and clear of all Encumbrances in consideration for a credit bid of PPCO’s prepetition and postpetition debt. See Bankruptcy Court Docket No. 302.¹ By virtue of the credit bid, there were no cash sale proceeds paid for the Acquired Assets.

12. The 363 Sale Order provided that all Encumbrances were to attach to the proceeds of the sale to the same extent, validity, priority, and perfection as existed on the Petition Date and

¹ The Acquired Assets included Lily Group’s interest in an estimated 1,200 acres of coal under a lease with Western Pocahontas Properties Limited Partnership (“**Pocahontas Lease**”).

all such extent, validity, priority and perfection was to be determined by further order of the Bankruptcy Court. *See* 363 Sale Order, ¶ 4 (“Pursuant to 11 U.S.C. § 363(b) and subject to the Credit Bid Order [defined below], the transfer of the Acquired Assets to the Purchaser is free and clear of all Encumbrances (except Permitted Encumbrances and the Assumed Liabilities as such may be determined consistent with the Procedures Orders, Credit Bid Order and Credit Bid), and all Encumbrances shall attach to the proceeds of the Sale to the same extent, validity, priority, and perfection as existed on the Petition Date and all such extent, validity, priority and perfection shall be determined by further order of this Court.”).

13. Notwithstanding the terms of the 363 Sale Order, as set forth in more detail below, the Official Committee of Unsecured Creditors of Lily Group (the “*Committee*”) was granted the right to challenge the validity of PPCO’s secured debt and the extent of PPCO’s liens. *See* Bankruptcy Court Docket No. 262 (*Order on Motion of the Official Committee of Unsecured Creditors to Limit Credit Bidding in the Sale of the Debtor’s Assets (“Credit Bid Order”)*)).

B. The Pre and Post-Bankruptcy Lien Disputes

14. Prior to the commencement of this receivership, the following actions/ claims were asserted against PPCO and/ or LC Energy (collectively, the “*Lien Disputes*”).

15. **The Mechanic’s Lien Action – Greene County Circuit Court.** On June 14, 2012, MacAllister Machinery Co., Inc. (“*MacAllister*”) filed a mechanic’s lien and corresponding complaint against Lily Group in Greene County, Indiana pursuant to which it sought to foreclose on its security interest, several other creditors’ mechanics’ lien interests and the Mortgage. PPCO subsequently filed a counterclaim and cross-claim against MacAllister seeking to foreclose its Mortgage and alleging its Mortgage and security interests were superior

to all other lien creditors of Lily Group. This case remains pending but is stayed because of the Receivership Order (defined below). *See Notice of Stay* filed by PPCO on January 3, 2017 in the Greene Circuit Court, Case No. 18C01-1206-PL-000020.

16. **The Stuckert & Howell Loan.** On February 26, 2013, James Stuckert, his wife, Diane Stuckert and Solomon Howell (“*Stuckert & Howell*”) provided Lily Group with a \$6 million loan, \$5 million of which was secured by a lien on Lily Group’s equipment (the “*Stuckert & Howell Loan*”). As part of the Stuckert & Howell Loan, PPCO agreed to, *inter alia*, subordinate its senior secured lien in Lily Group’s equipment to the extent of \$5 million in order to allow the Stuckert & Howell financing to proceed. Stuckert & Howell did not file a UCC financing statement to perfect their lien rights.²

17. **The Lien Challenge Complaint.** On February 24, 2014, before the 363 Sale Order was entered by the Bankruptcy Court, LC Energy commenced an adversary proceeding in the Bankruptcy Court against certain creditors of Lily Group asserting liens or interests in the Acquired Assets by filing a *Complaint to Determine Validity, Priority and Extent of Liens* (the “*Lien Challenge Complaint*”). *See* Adversary Proceeding No. 14-58008. The Lien Challenge Complaint requested that the Bankruptcy Court determine the validity, priority and extent of the liens in the Acquired Assets. The adversary proceeding has since been stayed by the Receivership Order. *See Notice of Submission of Stay* [Docket No. 211] filed by LC Energy in Adversary Proceeding No. 14-58008 on February 9, 2017.

18. **The Committee Motion for Leave, Standing, and Authority to Prosecute Claims against LC Energy.** On July 1, 2015, after the 363 Sale Order was entered, the Committee moved the Bankruptcy Court for leave, standing and authority on behalf of Lily

² Stuckert & Howell subsequently purchased the MacAllister mechanic’s lien and claim.

Group to: (1) commence, prosecute and settle fraudulent transfer and avoidance claims against LC Energy; (2) pursue subordination of LC Energy's prepetition claim against Lily Group and (3) pursue liability claims against LC Energy (the "***Motion for Leave***"). See Bankruptcy Docket No. 435 (*Motion for Authority of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing and Authority to Commence, Prosecute and Settle Certain Claims and Actions Against LC Energy Holdings, Inc.*). LC Energy opposed the Motion for Leave, asserting that the Committee lacked standing and made no showing of colorable claims. To date, the Bankruptcy Court has not ruled on the Motion for Leave.

19. Simultaneously with its Motion for Leave, the Committee filed an Adversary Complaint against LC Energy and PPCO seeking recovery of the value of the Non-Collateralized Leases less the amounts lent by PPCO to Lily Group after the Petition Date (the "***Committee Complaint***"). See Adversary Case No. 15-58025. The Committee Complaint alleges that the value of the Mine's coal and other assets are dependent on the value of the Non-Collateralized Leases, and without them, access to the coal and operation of the Mine is impossible. The Committee Complaint goes on to allege that the value of Non-Collateralized Leases is at least 50% of the total value of the Mine.

20. On October 16, 2015, LC Energy filed its Answer and Affirmative Defenses to the Committee Complaint [Docket No. 19 in Adversary Case No. 15-58025] and on October 21, 2015, PPCO filed its Motion to Dismiss for failure to state a claim, asserting that the only party the Committee seeks relief from is LC Energy and that the Committee failed to meet the pleading requirements against PPCO. See *Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit Opportunity Master Fund LP* [Docket No. 24] and *Memorandum in Support of Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit*

Opportunity Master Fund LP [Docket No. 25], pp. 1-2, 5-7.

21. On December 14, 2015, the Committee filed its response to the Motion to Dismiss and included a proposed amended complaint asserting more factual details against LC Energy and PPCO, and including five causes of action: (1) Recovery of the Value of the Non-Collateralized Leases to LC Energy's Estate; (2) Fraudulent Transfer (PPCO); (3) Lender Liability (PPCO); (4) Equitable Subordination (both); and Disallowance of Claim (LC Energy). *See* proposed Amended Complaint [Docket No. 27-1]. The Bankruptcy Court has not ruled on the Motion to Dismiss or otherwise ruled regarding the Committee's proposed amended complaint. This action is now stayed because of the Receivership Order.

C. Commencement of this Receivership and the Protections Afforded by the Receivership Order

22. On December 19, 2016, this Court entered the Order Appointing Receiver (amended on January 30, 2017) in the above-captioned matter (the "***Receivership Case***"). *See* Docket Nos. 6 and 59.

23. On July 6, 2017, this Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., and appointed me as Receiver effective immediately (i.e., July 6, 2017). *See* Docket No. 216.

24. On October 16, 2017 this Court entered the *Second Amended Order Appointing Receiver* (the "***Receivership Order***"). *See* Docket No. 276. Much like the statutory protections afforded a debtor in bankruptcy, the Receivership Order provides numerous protections to the Receivership Entities and their property to safeguard their collective assets for the benefit of all stakeholders in the Receivership Case. To that end, the Receivership Order vests this Court with exclusive jurisdiction over each of the Receivership Entities and their property. *See* Receivership Order, ¶ 1 ("This Court continues to take *exclusive* jurisdiction and possession of

the assets, of whatever kind and wherever situated, of the Receivership Entities (the “Receivership Assets”).”) (emphasis supplied).

25. To further protect the value of the Receivership Entities and their property, the Receivership Order:

- Directs me to take custody of all “Receivership Property,” defined as “all property interests of the Receivership Entities ... of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly.” Receivership Order, ¶6.A.
- Enjoins the creation or enforcement of a lien on any Receivership Property. *See* Receivership Order, ¶22.A.
- Prohibits the dissipation or diminishment of value of any Receivership Property by, *inter alia*, enforcing claims against any Receivership Property or attempting to modify, terminate or accelerate (the due date) any indebtedness, security agreement or other agreement which affects any Receivership Property. *See* Receivership Order, ¶22.C.

26. More generally, the Receivership Order enjoins “Ancillary Proceedings” by prohibiting parties from commencing or continuing foreclosure actions, default proceedings, or other actions of any nature involving Receivership Property, wherever located. *See* Receivership Order, ¶ 24. Furthermore, all courts having any jurisdiction over Ancillary Proceedings are enjoined from taking or permitting any action until further Order of this Court. *See* Receivership Order, ¶ 26.

27. Credit Funding LLC owns 100% of LC Energy Holdings LLC, which, in turn, owns 100% of LC Energy Operations LLC. PPCO owns 100% of Credit Funding LLC.

Accordingly, LC Energy is Receivership Property, the legal actions underlying the Lien Disputes are each stayed and this Court is vested with the exclusive authority to resolve the liens and claims being asserted against LC Energy.

D. Retention of Houlihan Lokey

28. To assist me with the monetization of certain assets, I retained Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”). Because of Houlihan Lokey’s areas of expertise, it was retained to market and sell specific assets including LC Energy. This Court approved Houlihan Lokey’s retention on November 11, 2017, *nunc pro tunc* to September 11, 2017 and issued a Memorandum Opinion regarding Houlihan Lokey’s retention on November 21, 2017 (the “*Houlihan Opinion*”). See Dkt. No. 285. As this Court acknowledged in the Houlihan Opinion, Houlihan Lokey was retained because of, among other reasons, its extensive experience with several hedge fund wind-downs, its experience with marketing illiquid assets across a broad spectrum of alternative investments, and its breadth of knowledge of potential investors to create a competitive environment to maximize recovery. See Houlihan Opinion at 6.

E. The Receivership Estate’s Preparation for the Sale of LC Energy

29. Since my appointment, my retained professionals and I have analyzed the legal, financial, regulatory and business issues relating to PPCO’s investment in LC Energy and the potential options for disposition thereof. Assisting my team in that effort was (i) the Mine operator retained by LC Energy prior to the commencement of the receivership, Quest Energy Inc. (“*Quest*”) – a best-in-class manager of thermal and metallurgical coal operations throughout the Illinois and Appalachian basins – (ii) Houlihan Lokey, (iii) Goldin and Associates and (iv) Indiana legal counsel with expertise in bankruptcy matters and local real estate.

30. While I worked with my team to position LC Energy for sale, I continued to make

monthly payments in the amount of approximately \$80,000-\$110,000 per month to maintain the value of the Mine until it can be monetized.³ Since the commencement of the Receivership Case, total disbursements of approximately \$1.2 million have been made to maintain the value of LC Energy. Without making such required payments, all value that might be achieved through the Sale would be lost.

31. Initiating a sale process for LC Energy has been complicated given the lien disputes discussed above. *See* Section II.B, *supra*. Because the purported lienholders assert that the 363 Sale Order failed to resolve the issue of what liens may still attach to the Acquired Assets and whether PPCO had an interest in all of the Acquired Assets, my team has spent months engaging with numerous purported lien and claim holders in an effort to resolve the purported Encumbrances otherwise diminishing the value of LC Energy. Notwithstanding these efforts, I have been unable to settle all of the alleged Encumbrances on LC Energy's assets.

32. In light of the forgoing, I determined, in my business judgment, that a sale of LC Energy through this Court and under the Procedures outlined in the accompanying Memorandum of Law in Support of the Motion will maximize the value of the asset while providing all asserted lien and claim holders with a single forum in which to assert their claims.

33. Absent the requested relief, I expect a substantial reduction in the purchase price for LC Energy, the additional expenditure of significant resources to resolve the purported liens and claims across multiple jurisdictions and the continuing incurrence of the monthly maintenance disbursements discussed above in connection with the Mine, collectively materially diminishing the value available for the stakeholders in this case.

³ The monthly expenses to upkeep the Mine include (i) wages and benefits for employees of Quest, the entity responsible for maintenance of the Mine, (ii) fuel, power and utilities at the Mine, (iii) bonding expenses, (iv) security, (v) management fees and (vi) certain other miscellaneous costs and expenses associated with the maintenance of the Mine.

III.

THIS COURT SHOULD APPROVE THE PROPOSED PROCEDURES FOR THE SALE OF LC ENERGY

34. Upon entry of the Procedures Order, Houlihan Lokey will commence marketing LC Energy to promptly locate the highest or otherwise best offer. To that end, I seek approval from this Court to designate a bid for LC Energy as the “stalking horse” bid (the bidder being a “*Stalking Horse*” and such agreement being a “*Stalking Horse Agreement*”) to serve as a baseline bid for LC Energy. Such relief is warranted here to induce an appropriate bid that will preserve value and incentivize other parties to pursue the assets to avoid a competitive disadvantage. Because the Stalking Horse that might be selected may have expended meaningful time, money and energy pursuing and negotiating the Sale transaction, I also request authority to provide the Stalking Horse with certain customary and reasonable bid protections, including, but not limited to, a breakup fee not to exceed 5% of the proposed purchase price, that I determine, in my business judgment, are best designed to maximize the value of LC Energy. I submit that the benefit to the Receivership Estate and its stakeholders for providing a market-based indication of value to open any Auction and from the increased certainty of a transaction will far outweigh the cost of any breakup fee payable to the Stalking Horse if it is not chosen as the Successful Bidder.

A. The Proposed Bidding Procedures

35. Upon my selection of a Stalking Horse, I request that the Bidding Procedures attached to the Procedures Order as Exhibit 1 govern the sale of LC Energy. The Bidding Procedures will facilitate a fair and efficient sales process that allows the me to identify the highest or otherwise best offer(s) for LC Energy by providing any prospective bidders and other interested parties an opportunity to outbid the Stalking Horse under an orderly and uniform mechanism. I believe that the Bidding Procedures are not likely to dissuade any serious potential

bidder and will result in the best and highest offer reasonably available for LC Energy.

B. The Proposed LC Energy Claims Procedures

36. As described above, the procedural history of PPCO's acquisition of Lily Group's assets through LC Energy left certain issues unresolved. For example, while the Bankruptcy Court authorized LC Energy to credit bid its secured debt to acquire the Mine and related rights, there has been no resolution of:

- the amount and priority of MacAllister's alleged liens against what was then Lily Group's assets;
- the amount and priority of the Stuckert & Howell liens;
- the allegations made by LC Energy through the Lien Challenge Complaint; and
- whether the 363 Sale Order extinguished the liens and claims of MacAllister, Stuckert & Howell and all other purported lien holders.⁴

37. While my preference would have been to sell LC Energy as-is, where-is, the competing claims against the assets proposed to be sold made that impossible. And so, I initially authorized her team, including Indiana counsel, to resolve the liens and claims set forth above and certain other asserted claims to better position LC Energy for sale.

38. Despite expending material time and resources to do just that, I have been unable to consensually settle the various set of claims being asserted. Complicating my efforts was the multi-jurisdictional litigation, the unwillingness of certain parties to engage in negotiations and the non-responsiveness of former purported lien holders. Considering these difficulties, I

⁴ In addition to the forgoing, the Bankruptcy Court did not resolve the Committee's claims that PPCO's secured debt was invalid and PPCO's liens did not extend to the Non-Collateralized Leases. However, the Committee does not assert a secured claim against LC Energy and so, the Committee's claims do not need to be addressed at this time. Moreover, the Committee's claims are pre-receivership in nature and so, those claims can and will be resolved in connection with any plan of distribution the Receiver promulgates.

determined that adopting procedures for the filing of claims against LC Energy and providing for the resolution thereof after the Sale was the most expedient, cost effective and equitable way in which to both position LC Energy for sale while preserving the rights of the claimholders. To that end, I propose that the LC Energy Claims Procedures set forth in the Procedures Order be approved.

39. I only seek to set a claims bar date for those claimants seeking to assert a Claim against LC Energy, which is Receivership Property. I have determined that establishment of the LC Energy Claims Procedures is critically important to the Sale process, the fair distribution of the net sale proceeds of the Sale among claimants and the efficient administration of the receivership in general. With potentially limited net Sale proceeds available for distribution, the LC Energy Claims Procedures will ensure that the available proceeds are distributed only to Claimants that hold valid Claims in the order of their priority.

40. Were this Court not to grant this relief, I would be confronted with having to litigate the validity and priority of Encumbrances against LC Energy's assets across multiple jurisdictions while being forced to continue making maintenance payments between \$80,000-\$110,000 per month. The expected time and expense of the litigations and the maintenance payments could potentially exceed the value of the very assets I seek to sell. And so, approval of the LC Energy Claims Procedures is the best and most equitable way to assure that the value of LC Energy is maximized for all stakeholders and that all lien holders can assert the amount and priority of their Claims under a set of procedures designed to save expenses and produce finality.

C. The Proposed Form and Manner of the Notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date Should be Approved

41. To provide all interested parties with notice of the Sale and all known creditors of LC Energy and purported lienholders in LC Energy's assets with adequate notice of the LC Energy Claims Procedures and the LC Energy Claims Bar Date, I request approval of the notice procedures, including approval of the form of such notices, set forth in the Procedures Order.

42. I submit that the notice to be provided through the Sale and Publication Notice (as defined in the Procedures Order) and the method of service proposed in the Procedures Order constitutes good and adequate notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date. Accordingly, I request that this Court approve the notice procedures and that no other or further notice of the Sale, the LC Energy Claims Procedures or the LC Energy Claims Bar Date is required.

D. The Proposed Procedures for Approval of the Sale to the Successful Bidder

43. After I select a Successful Bidder, I propose to provide all interested parties with additional notice of the Sale by filing with this Court a notice setting forth the identity of the Successful Bidder, the proposed purchase price and the material provisions of the proposed Sale transaction and attaching an affidavit(s) in support of the Sale and the proposed Sale Approval Order (the "*Successful Bidder Selection Notice*"). I will serve the Successful Bidder Selection Notice by United States first class mail on the LC Energy Service List and all parties in interest in this Case. As set forth in the Procedures Order, certain interested parties will have a right to object to the Sale in accordance with the procedures set forth therein.

44. I believe that the notice procedures are reasonable and adequate under the circumstances because they are reasonably calculated to provide timely and adequate notice of

the Successful Bidder for LC Energy and the terms of the proposed Sale to LC Energy's creditors and all other parties in interest that are entitled to notice. Indeed, these procedures are substantially similar to those approved by this Court in its *Order Adopting Protocols for Parties In Interest to Be Heard On Receiver Motions*. See Docket No. 271.

IV.

CONCLUSION

45. For the reasons set forth herein and in the accompanying Memorandum of Law in Support of the Motion, I respectfully request entry of an order, in substantially the form annexed hereto as Exhibit A, (a) authorizing me to sell the Receivership's rights in and to LC Energy free and clear of all Encumbrances; (b) authorizing me to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving the LC Energy Claims Procedures; (e) approving the Bidding Procedures and (f) granting such other and further relief as this Court deems appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of December 2018, at New York, New York.

/s/ Melanie L. Cyganowski

Melanie L. Cyganowski

Exhibit A to the Cyganowski Declaration

Proposed Procedures Order and Exhibits Thereto

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
SECURITIES AND EXCHANGE :
COMMISSION, :
Plaintiff, :
-v- :
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
Defendants. :
-----X

No. 16-cv-6848 (BMC)

[PROPOSED] ORDER (A) AUTHORIZING THE RECEIVER TO SELL THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF

Upon the motion (Docket No. []) of Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, (collectively, the “*Receivership Entities*”), for an order (I) (a) authorizing the Receiver to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Operations LLC

and/ or its assets (“*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof (the “*LC Energy Claims Procedures*”) and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “*Bidding Procedures*”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “*Motion*”), the Receiver’s Memorandum of Law in Support of the Motion and the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Receiver, the Receivership Entities and their stakeholders; and this Court having jurisdiction to consider the relief requested in the Motion pursuant to, *inter alia*, the October 16, 2017 *Second Amended Order Appointing Receiver*; and notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED as provided herein.
2. All objections to the relief provided for herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.
 - A. **Authorization to Enter into Stalking Horse Agreement and Approval of Bidding Procedures**
3. Subject to the terms of this Order, the Receiver is hereby authorized to enter into an agreement pursuant to which she may sell the Receivership’s interests in LC Energy free and clear of all Encumbrances (such agreement being a “*Stalking Horse Agreement*”).

4. The Stalking Horse Agreement shall be subject to higher or otherwise better offers as set forth in the immediately following paragraph. The Stalking Horse Agreement may provide the proposed purchaser with customary and reasonable bid protections (the “*Bid Protections*”), including, but not limited to, a breakup fee not to exceed 5% of the proposed purchase price, that the Receiver determines, in her business judgment, are best designed to maximize the value of LC Energy.

5. If the Receiver enters into a Stalking Horse Agreement, the Bidding Procedures attached hereto as **Exhibit 1** shall govern the sale of LC Energy. The Bidding Procedures are fair and reasonable and appropriate under the circumstances and designed to maximize recovery on, and realize the value of, LC Energy, and are therefore approved. The Bidding Procedures shall govern the submission, receipt and analysis of all bids relating to the proposed Sale and any party desiring to submit a bid following LC Energy’s entry into a Stalking Horse Agreement shall do so strictly in accordance with the terms of the Bidding Procedures and this Order.

B. Approval of Form and Manner of Notice

6. The forms of notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date (defined below) attached hereto as **Exhibit 2** (the “*Sale Notice*”) and **Exhibit 3** (the “*Publication Notice*”) are reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date and are each therefore approved.

7. Notice by Mail. The Receiver shall serve, within five (5) business days of entry of this Order, the Sale Notice by United States first class mail on (1) all known creditors of LC Energy at the address set forth in the Receivership Entities’ books and records or as updated pursuant to a request by a creditor or by returned mail from the post office with a forwarding address; (2) any party known or reasonably believed to have asserted any Encumbrance on LC

Energy's assets; (3) all parties to pending litigation against LC Energy (as of the date of entry of this Order); (4) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of LC Energy's assets; (5) the Internal Revenue Service and all applicable governmental units; and (6) such additional persons and entities deemed appropriate by the Receiver (collectively, the "*LC Energy Service List*"). Such notice shall be sufficient and proper notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date and no other or further notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date to such parties shall be required.

8. Notice by Publication. The Sale Notice shall also be made available, within five (5) business days of entry of this Order, on the Receiver's website at <http://www.platinumreceivership.com>. In addition, within fourteen (14) calendar days of entry of this Order, the Publication Notice shall be published in newspapers with general circulation in Greene and Sullivan Counties in the State of Indiana as well as in a newspaper with general circulation in the State of Indiana and other such publications that, in the Receiver's sole and absolute discretion, are reasonably calculated to provide notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date to potential claimants and purchasers. Such notice shall be sufficient and proper notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date and no other or further notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date to such parties shall be required.

C. Approval of Procedures for the Filing of Claims Against LC Energy and the Resolution Thereof

9. The following LC Energy Claims Procedures are hereby approved:

- (i) The deadline for filing a Claim (defined below) shall be , 2019 at **5:00 p.m. (ET)** (the "*LC Energy Claims Bar Date*").
- (ii) For purposes of this Order, a "*Claim*" is defined as: (1) a claim to a right

to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, *against LC Energy and/ or its assets*; or (2) a claim to a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, *against LC Energy and/ or its assets*.

- (iii) Any Claim asserted against LC Energy shall be served via electronic and regular mail no later than the LC Energy Claims Bar Date on: (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlp.com. Any Claim being asserted must state the Claim amount, state with specificity the basis for the Claim and provide all documentation in support thereof. Such documentation may include but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mechanic's liens, mortgages, security agreements, evidence of perfection of lien and other documents evidencing the amount and basis of the claim. If such supporting documentation is not available, the claimant must attach to the Claim an explanation of why the documentation is unavailable.
- (iv) **Any claimant who is required to submit a Claim, but fails to do so by the LC Energy Claims Bar Date, shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property; shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim; shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim; and shall not receive any further notices on account of such Claim. Further, if a claimant is required to submit a Claim but fails to do so by the LC Energy Claims Bar Date, then LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property will be, and hereby are, discharged from all indebtedness or liability with respect to such Claim.**
- (v) Within three (3) months of the approval of the sale of LC Energy (unless extended by the Receiver filing a notice of extension in this Court) for each Claim timely and properly filed by the LC Energy Claims Bar Date, the Receiver shall serve a written determination as to whether the Claim should be allowed as filed, allowed in a reduced amount, disallowed or be subject to the provision of additional documents to the asserted Claim holder via U.S. regular mail or via electronic mail (the "*Receiver's Claim*

Determination”).

- (vi) If the Receiver’s Claim Determination finds that the Claim should be allowed in a reduced amount, disallowed or be subject to the provision of additional documents, the asserted Claim holder shall have thirty (30) days thereafter to serve a response to the Receiver’s Claim Determination via electronic and regular mail on (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlps.com.
- (vii) The Receiver shall then have thirty (30) days to serve a reply on the asserted Claim holder as set forth in subsection (i) above.
- (viii) If the Receiver and the claimant are unable to agree on the allowance or disallowance of a Claim or the priority thereof, the Receiver shall file a motion with this Court attaching the Receiver’s Claim Determination, the asserted Claim holder’s response and the Receiver’s reply, requesting that this Court resolve such dispute without additional briefing by the Receiver or the Claimant. The Receiver reserves the right to request that this Court direct mandatory mediation on such terms and conditions as the Receiver reasonably proposes with respect to any specific Claim determination dispute.

10. An entity filing a Claim in accordance with the above procedures shall be deemed to have consented to the jurisdiction of this Court for all purposes related to its Claim, including, without limitation, a determination as to the validity and amount of its Claim asserted against LC Energy.

11. In connection with the Receiver’s Claim Determination, the Receiver reserves the right to dispute, or assert offsets or defenses as to the nature, amount, liability, classification, or otherwise against, any amounts asserted in any Claim. Nothing contained herein is intended to preclude the Receiver from objecting to any Claim on any grounds.

12. Until all secured Claims against LC Energy that are reasonably asserted to be prior in right to that of PPCO are resolved by agreement with the Receiver or by an order of this Court, the Receiver shall not disburse the net proceeds of the Sale; provided, however, the Receiver may

(i) pay the customary and reasonable costs and expenses of the Sale at closing, which include, but are not limited to, the fees and expenses of Houlihan Lokey as previously approved by this Court and (ii) reimburse PPCO for the DIP Loan (defined in the Motion) and for all post-receivership costs and expenses it paid for, or on behalf of, LC Energy.

D. Procedures for Approval of Successful Bidder and Sale

13. The following procedures for approval of the Sale to the Successful Bidder are hereby approved:

- (i) Upon the Receiver's selection of a Successful Bidder (defined in the Bidding Procedures) in accordance with the Bidding Procedures, the Receiver shall file a notice with this Court setting forth the identity of the Successful Bidder, the proposed purchase price, the material provisions of the proposed Sale transaction, an affidavit(s) in support of the Sale and a proposed order approving the Sale and the Successful Bidder (the "**Successful Bidder Selection Notice**"). The Receiver shall serve the Successful Bidder Selection Notice by United States first class mail on the LC Energy Service List and all parties in interest in this Case.
- (ii) On or before seven (7) days after filing of the Successful Bidder Selection Notice (the "**Response Deadline**"), any party-in-interest wishing to be heard with respect to the selection of the Successful Bidder and approval of the Sale (other than parties named in the caption), shall electronically deliver to the Receiver via the Receiver's email address (platinumreceiver@otterbourg.com), that party in interest's response (collectively, the "**Responses**"); parties in interest (other than parties named in the caption) shall not file Responses on the ECF docket in this action.
- (iii) On or before two (2) business days after the Response Deadline, the Receiver shall compile all the Responses she has received and shall file the Responses under one docket entry on the ECF docket in this action.
- (iv) The Receiver shall have no more than seven (7) days following the Response Deadline to file any reply in further support of the Sale.
- (v) This Court may then either schedule a hearing to consider the Sale or decide to enter an order approving or denying the Sale without oral argument.

14. The Receiver is authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the

transactions contemplated by this Order.

15. This Order shall be effective and enforceable immediately upon entry.

16. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2018
Brooklyn, New York

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit 1 to Procedures Order
Proposed Bidding Procedures

[Proposed] Bidding Procedures for the Sale of LC Energy Operations LLC

On December [____], 2018, the United States District Court for the Eastern District of New York (the “*Court*”) entered an order [Docket No. ____] (the “*Procedures Order*”), which, among other things, (a) authorized the Receiver to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Operations LLC and/ or its assets (“*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b) authorized the Receiver to enter into a stalking horse agreement and approved certain bid protections in connection therewith; (c) approved the form and manner of notice of the Sale; (d) approved certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approved bid procedures for the sale of LC Energy upon the selection of a stalking horse. The following are the Bidding Procedures approved by the Procedures Order.¹

1. Stalking Horse Agreement and Qualified Bidders and Bids. Within seven (7) business days of execution of a contract for the sale of LC Energy (the “*Stalking Horse Agreement*”) with a proposed purchaser (the “*Stalking Horse*”), the Receiver shall notify all parties having previously expressed interest in purchasing LC Energy that they may submit a Qualified Bid (defined below) in accordance with these procedures (the “*Stalking Horse Notice*”).

For purposes hereof, the determination of whether any entity is a “Qualified Bidder” and whether any bid constitutes a “Qualified Bid” shall be made by the Receiver in her reasonable business judgment and as set forth below.

2. A Qualified Bid. A “*Qualified Bid*” must, at a minimum:

- (i) Fully disclose the identity of the person or entity that will be bidding for LC Energy (the “*Potential Bidder*”).
- (ii) Be accompanied by information which demonstrates the Potential Bidder’s ability (and the sources of the Potential Bidder’s ability) to close on its purchase of LC Energy without contingencies as to financing and/or additional due diligence if the Potential Bidder should be selected by the Receiver to purchase LC Energy (in such case the Potential Bidder being deemed the “*Successful Bidder*” and such bid, the “*Successful Bid*”).
- (iii) Agree in writing that the Potential Bidder is bound to its bid until one business day after the Closing Date (defined below) or until its bid is affirmatively rejected, but that such offer to acquire LC Energy is not binding on the Receiver prior to the time that the Auction (defined below) is conducted and the Sale is approved by the Court.

¹ All capitalized terms not defined herein shall have the meaning ascribed to such terms in the Procedures Order.

- (iv) Be accompanied by evidence that a good faith deposit in the amount of 10% of the Potential Bidder's Bid (the "**Deposit**") in immediately available funds has been made (or is concurrently being made) by wire transfer to the Receiver and agreeing that the Deposit shall be held in a segregated non-interest bearing account in accordance with the terms hereof. Within three (3) business days of the closing of a Sale with the Successful Bidder, the Deposit of all other Qualified Bidders shall be returned by the Receiver. The deposit of the Successful Bidder shall be applied to the purchase price for the Sale.
- (v) Agree in writing to close on the purchase of LC Energy if the Qualified Bidder's bid at the Auction is selected as the Successful Bid, not more than thirty (30) calendar days from entry of a Court order approving the Sale, or on such other date as the Receiver and the Successful Bidder shall otherwise agree to in writing, or may otherwise be directed by Court order, or as may otherwise be established in accordance with the terms hereof (such date, the "**Closing Date**"), with TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL BIDDER'S OBLIGATION TO CLOSE ON THE CLOSING DATE AND TO PAY THE BALANCE OF THE PURCHASE PRICE AT THE CLOSING.
- (vi) Attach an executed agreement to purchase LC Energy in substantially the same form as the Stalking Horse Agreement, marked to show proposed changes (the "**Modified Agreement**"), which Modified Agreement must be acceptable to the Receiver. **The Modified Agreement must provide for an increase to the Purchase Price set forth in the Stalking Horse Agreement in an amount to be announced by the Receiver in connection with the Stalking Horse Notice.**

3. The Auction. If the Receiver has received one or more Qualified Bids by the Qualified Bidder Deadline of [___], then the Receiver shall conduct an auction with respect to LC Energy (the "**Auction**") at such time and location determined by the Receiver. The rules governing the Auction and the refund of Deposits shall be announced by the Receiver prior to such Auction.

4. Reservation of Rights. Notwithstanding any of the foregoing, the Receiver reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend any deadlines set forth herein, allow for bidding on only a portion of LC Energy and/ or its assets, waive terms and conditions set forth herein with respect to any or all potential bidders, impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction and adjourn any sale hearing with respect to all or a portion of the assets to be sold. If certain of the assets to be sold are withheld from the sale process, the Receiver reserves the right to establish procedures consistent with those approved by the Procedures Order as may be necessary to obtain the highest and best bids for such withheld assets

Exhibit 2 to Procedures Order

Sale Notice

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
SECURITIES AND EXCHANGE :
COMMISSION, :
: Plaintiff, :
: -v- :
: :
PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :
: Defendants. :
-----X

No. 16-cv-6848 (BMC)

**NOTICE OF THE (I) PROPOSED SALE OF
THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS
AND (II) PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/
OR ITS ASSETS AND THE RESOLUTION THEREOF**

PLEASE TAKE NOTICE that:

1. On December [___], 2018, the United States District Court for the Eastern District of New York (the “*Court*”) entered an order (I) (a) authorizing Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*”) to sell the Receivership’s rights in and to LC Energy Operations LLC and/ or its assets (“*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests; (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “*Procedures Order*”).

2. Should you wish to learn more about LC Energy and bid on its assets, you should contact Richard Saltzman of Houlihan Lokey by telephone at (212) 497-4100 or by email at RSaltzman@HL.com.

3. **IF YOU BELIEVE YOU HOLD A CLAIM (DEFINED BELOW) DIRECTLY AGAINST LC ENERGY, THE DEADLINE FOR FILING A CLAIM IS [____], 2019 AT 5:00 P.M. (ET) (THE “LC ENERGY CLAIMS BAR DATE”).**

4. If you believe you have (1) a claim to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, *against LC Energy and/ or its assets* or (2) a claim to a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, *against LC Energy and/ or its assets* (together, a “*Claim*”), you **must** file a Claim by the LC Energy Claims Bar Date as set forth below.

5. **THERE WILL BE A SEPARATE CLAIMS BAR DATE FOR CLAIMS AGAINST THE RECEIVERSHIP ENTITIES AS OPPOSED TO AGAINST LC ENERGY. ACCORDINGLY, YOU SHOULD NOT FILE A CLAIM IF YOU DO NOT BELIEVE YOU HAVE A CLAIM DIRECTLY AGAINST LC ENERGY.**

6. Any Claim asserted against LC Energy must be served via electronic and regular mail so that it is **actually received** by the LC Energy Claims Bar Date on: (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlp.com. Any Claim being asserted must state the Claim amount, state with specificity the basis for the Claim and provide all documentation in support thereof. Such documentation may include but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mechanic’s liens, mortgages, security agreements, evidence of perfection of lien and other documents evidencing the amount and basis of the claim. If such supporting documentation is not available, the claimant must attach to the Claim an explanation of why the documentation is unavailable.

7. **Any claimant who is required to submit a Claim, but fails to do so by the LC Energy Claims Bar Date, shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property; shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim; shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim; and shall not receive any further notices on account of such Claim. Further, if a claimant is required to submit a Claim but fails to do so by the LC Energy Claims Bar Date, then LC**

Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property will be, and hereby are, discharged from all indebtedness or liability with respect to such Claim.

8. THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HAVE A CLAIM AGAINST LC ENERGY OR THAT THE RECEIVER OR THE COURT BELIEVE THAT YOU HAVE A CLAIM.

9. If you have any questions relating to this Notice, please feel free to contact the Receiver by emailing her at platinumreceiver@otterbourg.com.

Dated: _____, 201__

OTTERBOURG P.C.

By: /s/
Adam C. Silverstein
Erik B. Weinick
230 Park Avenue
New York, New York 10169
Tel.: (212) 661-9100
Fax: (212) 682-6104
asilverstein@otterbourg.com
eweinick@otterbourg.com

*Attorneys for Melanie L. Cyganowski, as
Receiver*

Exhibit 3 to Procedures Order

Publication Notice

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X		
SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
-v-	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	No. 16-cv-6848 (BMC)
PLATINUM CREDIT MANAGEMENT, L.P.;	:	
MARK NORDLICHT;	:	
DAVID LEVY;	:	
DANIEL SMALL;	:	
URI LANDESMAN;	:	
JOSEPH MANN;	:	
JOSEPH SANFILIPPO; and	:	
JEFFREY SHULSE,	:	
	:	
Defendants.	:	
-----X		

NOTICE OF THE (I) PROPOSED SALE OF THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS AND (II) PROCEDURES FOR THE FILING OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION THEREOF

PLEASE TAKE NOTICE that on December [____], 201_, the United States District Court for the Eastern District of New York (the “*Court*”) entered an order (I) (a) authorizing Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*”) to sell the Receivership’s rights in and to LC Energy Operations LLC and/ or its assets (“*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests; (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “*Procedures Order*”).

PLEASE TAKE NOTICE that if you wish to learn more about LC Energy and bid on its assets, you should contact Richard Saltzman of Houlihan Lokey by telephone at (212) 497-4100 or by email at RSaltzman@HL.com.

PLEASE TAKE NOTICE THAT IF YOU BELIEVE YOU HOLD A CLAIM (DEFINED BELOW) DIRECTLY AGAINST LC ENERGY, THE DEADLINE FOR FILING A CLAIM IS [____], 2019 AT 5:00 P.M. (ET) (THE “LC ENERGY CLAIMS BAR DATE”).

PLEASE TAKE NOTICE that if you believe you have (1) a claim to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, *against LC Energy and/ or its assets* or (2) a claim to a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, *against LC Energy and/ or its assets* (together, a “**Claim**”), you **must** file a Claim by the LC Energy Claims Bar Date as set forth below.

THERE WILL BE A SEPARATE CLAIMS BAR DATE FOR CLAIMS AGAINST THE RECEIVERSHIP ENTITIES AS OPPOSED TO AGAINST LC ENERGY. ACCORDINGLY, YOU SHOULD NOT FILE A CLAIM IF YOU DO NOT BELIEVE YOU HAVE A CLAIM DIRECTLY AGAINST LC ENERGY.

PLEASE TAKE NOTICE that any Claim asserted against LC Energy must be served via electronic and regular mail so that it is **actually received** by the LC Energy Claims Bar Date on: (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlp.com. Any Claim being asserted must state the Claim amount, state with specificity the basis for the Claim and provide all documentation in support thereof. Such documentation may include but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mechanic’s liens, mortgages, security agreements, evidence of perfection of lien and other documents evidencing the amount and basis of the claim. If such supporting documentation is not available, the claimant must attach to the Claim an explanation of why the documentation is unavailable.

PLEASE TAKE NOTICE that any claimant who is required to submit a Claim, but fails to do so by the LC Energy Claims Bar Date, shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property; shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim; shall be

denied any distributions under any distribution plan implemented by the Receiver on account of such Claim; and shall not receive any further notices on account of such Claim. Further, if a claimant is required to submit a Claim but fails to do so by the LC Energy Claims Bar Date, then LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property will be, and hereby are, discharged from all indebtedness or liability with respect to such Claim.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**RECEIVER’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
ENTRY OF AN ORDER (I) (A) AUTHORIZING THE RECEIVER TO SELL
THE RECEIVERSHIP’S RIGHTS IN AND TO LC ENERGY OPERATIONS LLC
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND
OTHER INTERESTS; (B) APPROVING PROCEDURES FOR THE FILING
OF CLAIMS AGAINST LC ENERGY AND/ OR ITS ASSETS AND THE RESOLUTION
THEREOF AND (C) GRANTING CERTAIN RELATED RELIEF
AND (II) APPROVING THE SALE OF LC ENERGY FREE AND CLEAR OF
ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

OTTERBOURG P.C.
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(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

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Melanie L. Cyganowski, the duly appointed Receiver (the “**Receiver**”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“**PPCO**”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “**Receivership Entities**”), through her counsel, Otterbourg P.C., respectfully submits this memorandum of law in support of her motion for an order (I) (a) authorizing the Receiver to sell (the “**Sale**”) the Receivership’s rights in and to LC Energy Operations LLC and/or its assets (“**LC Energy**”) free and clear of all liens, claims, encumbrances and other interests (“**Encumbrances**”); (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof (the “**LC Energy Claims Procedures**”) and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “**Bidding Procedures**”) and together with the LC Energy Claims Procedures, the “**Procedures**”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “**Motion**”). In support of the Motion, the Receiver states as follows:

I. PRELIMINARY STATEMENT

Through the Motion the Receiver seeks to implement a process which will allow her to sell certain Receivership Property (defined below) estimated to be the Receiver’s largest remaining asset and eliminate approximately \$80,000-\$110,000 per month in carrying costs and

expenses.

LC Energy, an indirect subsidiary of Receivership Entity PPCO, owns the Goldstar Coal Mine located in Green County, Indiana (the “*Mine*”). While the mine is idle, it is near-operational, with access, according to independent reports, to 27.4 million tons of recoverable thermal coal. The Mine thus presents an attractive investment opportunity to realize significant returns. Nonetheless, consistent with this Court’s directive to prudently wind-down the Receivership Entities and dispose of their assets in a manner that safely returns to stakeholders what value can be recovered, the Receiver, in her business judgment, has concluded that a sale of LC Energy free and clear of all Encumbrances is the most prudent course of action. Selling LC Energy now through the Procedures set forth herein will not only maximize the value of LC Energy but will cease the incurrence of approximately \$80,000-\$110,000 per month which costs are necessary to preserve and maintain the value of the Mine.

While a decision to pursue the Sale was made some time ago, the Receiver and her professionals were forced to devote a meaningful amount of time engaging with LC Energy’s purported lien and claim holders whose Encumbrances otherwise diminish the value of LC Energy. Specifically, the Receiver’s team has spent months trying to locate and then negotiate with certain of these purported lienholders to satisfy the Encumbrances which are impairing the value of LC Energy. Yet, they were unable to resolve any of the alleged Encumbrances on LC Energy’s assets. In light of the positions taken by certain recalcitrant claimholders, the Receiver determined that maximizing the value of LC Energy could only be achieved through a sale process that allowed LC Energy to be sold free and clear of the competing liens and claims against its assets while providing all asserted lien and claim holders with a single forum in which to assert the priority and amount of their alleged claims.

The proposed methodology seeks to maximize value for the sale of the asset while preserving the rights of the purported lienholders to assert competing liens and claims against the proceeds, on a timetable that will no longer require the Receivership to shoulder the heavy burden of the monthly carrying costs. Equally important, the proposed procedures permit a single judicial forum to hear and determine competing liens and claims, thus providing all litigants with the benefits of avoiding multiple litigations in multiple forums and potentially conflicting judicial decisions. This process will also save the Receivership significant administrative costs.

To achieve the forgoing, the Receiver requests two forms of relief through the Motion. First, entry of an order (the “**Procedures Order**”) which, *inter alia*, (i) authorizes the Receiver to sell the Receivership’s rights in and to LC Energy free and clear of all Encumbrances and (ii) approves the Bidding and LC Energy Claims Procedures in connection with the Sale. Second, after the Receiver selects a Successful Bidder (defined in the Bidding Procedures) and serves notice on all interested parties of the material provisions of the proposed Sale and provides an opportunity to object to the Sale in accordance with the approved Procedures, the Receiver requests entry of an order (the “**Sale Approval Order**”) approving the sale of LC Energy free and clear of all Encumbrances.

The Receiver’s decision to consummate the Sale represents a reasonable exercise of her business judgment and, accordingly, the Sale should be approved. Upon entry of the Procedures Order, the Receiver will commence a comprehensive process to market LC Energy. The open and fair auction and Sale process contemplated by the Bidding Procedures will ensure that the Receiver receives the highest or otherwise best value available by allowing the market to determine the purchase price for LC Energy. At the same time, the Procedures proposed herein -

providing for the filing of claims being asserted against LC Energy and resolution thereof *after the Sale* - allow for a single and convenient forum in which to sort out the competing claims against LC Energy's assets. The relief requested herein, for the reasons set forth below and in the Cyganowski Dec., should thus be granted.

II. BACKGROUND

A. PPCO's Acquisition of Lily Group

On February 16, 2012, PPCO provided Lily Group, Inc. ("**Lily Group**") – an entity founded to develop, operate and open access to a known coal reserve known as the Landree Mine in Greene County and Sullivan County, Indiana – with a \$13 million loan pursuant to a Note and a Note Purchase Agreement (the "**Loan**"). See accompanying Declaration of the Receiver in Support of the Motion (the "**Cyganowski Dec.**"), ¶ 7.

To collateralize the Loan, PPCO acquired a lien interest in the Mine (the "**Mortgage**") and was granted a security interest in most of Lily's personal property mineral rights and lease rights, except lease rights for: (1) surface land owned by the Indiana Department of Natural Resources used as a coal holding facility and for a waste disposal plot (the "**DNR Lease**"); (2) a railroad siding owned by the Indiana Railroad (the "**IRR Sidetrack Lease**"); and (3) mineral rights owned by Indiana Railroad for a small amount of coal (the "**IRR Coal Lease**") (collectively, the "**Non-Collateralized Leases**"). See Cyganowski Dec., ¶ 8.

On September 23, 2013 (the "**Petition Date**"), Lily Group filed a voluntary petition for chapter 11 relief in the United States Bankruptcy Court for the Southern District of Indiana, Terre Haute Division (the "**Bankruptcy Court**"). See case number 13-81073 (the "**Chapter 11 Case**"). See Cyganowski Dec., ¶ 9.

Shortly after the Petition Date, PPCO assigned the Loan to LC Energy, an entity created and wholly owned, albeit indirectly, by Receivership Entity PPCO. *See* Cyganowski Dec., ¶ 10. LC Energy subsequently extended postpetition financing to Lily Group in the approximate amount of \$715,000 (the “**DIP Loan**”). *See id.* In consideration for the DIP Loan, LC Energy was granted a super-priority lien and claim against all of Lily Group’s assets pursuant to an order of the Bankruptcy Court. *See id.* and Bankruptcy Court Docket No. 34 (*Interim Order Authorizing Debtor to Utilize Cash Collateral on an Interim Basis; Authorizing Debtor to Enter into Debtor-In-Possession Financing Agreement; and Providing Adequate Protection to Other Secured Creditors*), ¶¶ 1.2-1.3.

On February 28, 2014, the Bankruptcy Court entered the Order Pursuant to 11 U.S.C. §§ 363 and 365 (I) Approving the Sale of Substantially all of the Debtor’s Assets Free and Clear of Liens, Claims, Interests, and Encumbrances with Valid Liens to Attach to Proceeds of Sale; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Certain Related Relief (the “**363 Sale Order**”) pursuant to which it approved the sale of substantially all of Lily Group’s assets (the “**Acquired Assets**”) to LC Energy free and clear of all Encumbrances in consideration for a credit bid of PPCO’s prepetition and postpetition debt. *See* Cyganowski Dec., ¶ 11 and Bankruptcy Court Docket No. 302.¹ By virtue of the credit bid, there were no cash sale proceeds paid for the Acquired Assets. *See* Cyganowski Dec., ¶ 11.

The 363 Sale Order provided that all Encumbrances were to attach to the proceeds of the

¹ The Acquired Assets included Lily Group’s interest in an estimated 1,200 acres of coal under a lease with Western Pocahontas Properties Limited Partnership (“**Pocahontas Lease**”).

sale to the same extent, validity, priority, and perfection as existed on the Petition Date and all such extent, validity, priority and perfection was to be determined by further order of the Bankruptcy Court. *See* Cyganowski Dec., ¶ 12 and 363 Sale Order, ¶ 4 (“Pursuant to 11 U.S.C. § 363(b) and subject to the Credit Bid Order [defined below], the transfer of the Acquired Assets to the Purchaser is free and clear of all Encumbrances (except Permitted Encumbrances and the Assumed Liabilities as such may be determined consistent with the Procedures Orders, Credit Bid Order and Credit Bid), and all Encumbrances shall attach to the proceeds of the Sale to the same extent, validity, priority, and perfection as existed on the Petition Date and all such extent, validity, priority and perfection shall be determined by further order of this Court.”).

Notwithstanding the terms of the 363 Sale Order, as set forth in more detail below, the Official Committee of Unsecured Creditors of Lily Group (the “*Committee*”) was granted the right to challenge the validity of PPCO’s secured debt and the extent of PPCO’s liens. *See* Cyganowski Dec., ¶ 13 and Bankruptcy Court Docket No. 262 (*Order on Motion of the Official Committee of Unsecured Creditors to Limit Credit Bidding in the Sale of the Debtor’s Assets (“Credit Bid Order”)*).

B. The Pre and Post-Bankruptcy Lien Disputes

Prior to the commencement of this receivership, the following actions/ claims were asserted against PPCO and/ or LC Energy (collectively, the “*Lien Disputes*”). *See* Cyganowski Dec., ¶ 14.

The Mechanic’s Lien Action – Greene County Circuit Court. On June 14, 2012, MacAllister Machinery Co., Inc. (“*MacAllister*”) filed a mechanic’s lien and corresponding complaint against Lily Group in Greene County, Indiana pursuant to which it sought to foreclose

on its security interest, several other creditors' mechanics' lien interests and the Mortgage. *See* Cyganowski Dec., ¶ 15. PPCO subsequently filed a counterclaim and cross-claim against MacAllister seeking to foreclose its Mortgage and alleging its Mortgage and security interests were superior to all other lien creditors of Lily Group. *See id.* This case remains pending but is stayed because of the Receivership Order (defined below). *See id.* and *Notice of Stay* filed by PPCO on January 3, 2017 in the Greene Circuit Court, Case No. 18C01-1206-PL-000020.

The Stuckert & Howell Loan. On February 26, 2013, James Stuckert, his wife, Diane Stuckert and Solomon Howell ("*Stuckert & Howell*") provided Lily Group with a \$6 million loan, \$5 million of which was secured by a lien on Lily Group's equipment (the "*Stuckert & Howell Loan*"). *See* Cyganowski Dec., ¶ 16. As part of the Stuckert & Howell Loan, PPCO agreed to, *inter alia*, subordinate its senior secured lien in Lily Group's equipment to the extent of \$5 million in order to allow the Stuckert & Howell financing to proceed. *See id.* Stuckert & Howell did not file a UCC financing statement to perfect their lien rights.² *See id.*

The Lien Challenge Complaint. On February 24, 2014, before the 363 Sale Order was entered by the Bankruptcy Court, LC Energy commenced an adversary proceeding in the Bankruptcy Court against certain creditors of Lily Group asserting liens or interests in the Acquired Assets by filing a *Complaint to Determine Validity, Priority and Extent of Liens* (the "*Lien Challenge Complaint*"). *See* Cyganowski Dec., ¶ 17 and Adversary Proceeding No. 14-58008. The Lien Challenge Complaint requested that the Bankruptcy Court determine the validity, priority and extent of the liens in the Acquired Assets. *See id.* The adversary

² Stuckert & Howell subsequently purchased the MacAllister mechanic's lien and claim.

proceeding has since been stayed by the Receivership Order. *See id.* and *Notice of Submission of Stay* [Docket No. 211] filed by LC Energy in Adversary Proceeding No. 14-58008 on February 9, 2017.

The Committee Motion for Leave, Standing, and Authority to Prosecute Claims against LC Energy. On July 1, 2015, after the 363 Sale Order was entered, the Committee moved the Bankruptcy Court for leave, standing and authority on behalf of Lily Group to: (1) commence, prosecute and settle fraudulent transfer and avoidance claims against LC Energy; (2) pursue subordination of LC Energy's prepetition claim against Lily Group and (3) pursue liability claims against LC Energy (the "***Motion for Leave***"). *See* Cyganowski Dec., ¶ 18 and Bankruptcy Docket No. 435 (*Motion for Authority of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing and Authority to Commence, Prosecute and Settle Certain Claims and Actions Against LC Energy Holdings, Inc.*). LC Energy opposed the Motion for Leave, asserting that the Committee lacked standing and made no showing of colorable claims. *See id.* To date, the Bankruptcy Court has not ruled on the Motion for Leave. *See id.*

Simultaneously with its Motion for Leave, the Committee filed an Adversary Complaint against LC Energy and PPCO seeking recovery of the value of the Non-Collateralized Leases less the amounts lent by PPCO to Lily Group after the Petition Date (the "***Committee Complaint***"). *See* Cyganowski Dec., ¶ 19 and Adversary Case No. 15-58025. The Committee Complaint alleges that the value of the Mine's coal and other assets are dependent on the value of the Non-Collateralized Leases, and without them, access to the coal and operation of the Mine is impossible. *See id.* The Committee Complaint goes on to allege that the value of Non-Collateralized Leases is at least 50% of the total value of the Mine. *See id.*

On October 16, 2015, LC Energy filed its Answer and Affirmative Defenses to the Committee Complaint [Docket No. 19 in Adversary Case No. 15-58025] and on October 21, 2015, PPCO filed its Motion to Dismiss for failure to state a claim, asserting that the only party the Committee seeks relief from is LC Energy and that the Committee failed to meet the pleading requirements against PPCO. *See Cyganowski Dec.*, ¶ 20, *Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit Opportunity Master Fund LP* [Docket No. 24] and *Memorandum in Support of Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit Opportunity Master Fund LP* [Docket No. 25], pp. 1-2, 5-7.

On December 14, 2015, the Committee filed its response to the Motion to Dismiss and included a proposed amended complaint asserting more factual details against LC Energy and PPCO, and including five causes of action: (1) Recovery of the Value of the Non-Collateralized Leases to LC Energy's Estate; (2) Fraudulent Transfer (PPCO); (3) Lender Liability (PPCO); (4) Equitable Subordination (both); and Disallowance of Claim (LC Energy). *See Cyganowski Dec.*, ¶ 21 and proposed Amended Complaint [Docket No. 27-1]. The Bankruptcy Court has not ruled on the Motion to Dismiss or otherwise ruled regarding the Committee's proposed amended complaint. *See Cyganowski Dec.*, ¶ 21. This action is now stayed because of the Receivership Order. *See id.*

C. Commencement of this Receivership and the Protections Afforded by the Receivership Order

On December 19, 2016, this Court entered the *Order Appointing Receiver* (amended on January 30, 2017) in the above-captioned matter (the "*Receivership Case*"). *See* Docket Nos. 6 and 59. On July 6, 2017, this Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., and appointed Melanie L. Cyganowski as Receiver effective

immediately (*i.e.*, July 6, 2017). *See* Docket No. 216.

On October 16, 2017 this Court entered the *Second Amended Order Appointing Receiver* (the “**Receivership Order**”). *See* Docket No. 276. Much like the statutory protections afforded a debtor in bankruptcy, the Receivership Order provides numerous protections to the Receivership Entities and their property to safeguard their collective assets for the benefit of all stakeholders in the Receivership Case. *See* Cyganowski Dec., ¶ 24. To that end, the Receivership Order vests this Court with exclusive jurisdiction over each of the Receivership Entities and their property. *See* Receivership Order, ¶ 1 (“This Court continues to take *exclusive* jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the “Receivership Assets”).”) (emphasis supplied).

To further protect the value of the Receivership Entities and their property, the Receivership Order:

- Directs the Receiver to take custody of all “Receivership Property,” defined as “all property interests of the Receivership Entities ... of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly.” Receivership Order, ¶6.A.
- Enjoins the creation or enforcement of a lien on any Receivership Property. *See* Receivership Order, ¶22.A.
- Prohibits the dissipation or diminishment of value of any Receivership Property by, *inter alia*, enforcing claims against any Receivership Property or attempting to modify, terminate or accelerate (the due date) any indebtedness, security agreement or other agreement which affects any Receivership Property. *See* Receivership Order, ¶22.C.

More generally, the Receivership Order enjoins “Ancillary Proceedings” by prohibiting parties from commencing or continuing foreclosure actions, default proceedings, or other actions of any nature involving Receivership Property, wherever located. *See* Receivership Order, ¶ 24.

Furthermore, all courts having any jurisdiction over Ancillary Proceedings are enjoined from taking or permitting any action until further Order of this Court. *See* Receivership Order, ¶ 26.

As set forth in the Cyganowski Dec., Credit Funding LLC owns 100% of LC Energy Holdings LLC, which, in turn, owns 100% of LC Energy Operations LLC. PPCO owns 100% of Credit Funding LLC. *See* Cyganowski Dec., ¶ 27. Accordingly, LC Energy is Receivership Property, the legal actions underlying the Lien Disputes are each stayed and this Court is vested with the exclusive authority to resolve the liens and claims being asserted against LC Energy. *See id.*

D. The Receiver’s Retention of Houlihan Lokey

To assist the Receiver with the monetization of certain assets, she retained Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”). *See* Cyganowski Dec., ¶ 28. Because of Houlihan Lokey’s areas of expertise, it was retained to market and sell specific assets including LC Energy. *See id.* This Court approved Houlihan Lokey’s retention on November 11, 2017, *nunc pro tunc* to September 11, 2017 and issued a Memorandum Opinion regarding Houlihan Lokey’s retention on November 21, 2017 (the “*Houlihan Opinion*”). *See* Dkt. No. 285. As this Court acknowledged in the Houlihan Opinion, Houlihan Lokey was retained because of, among other reasons, its extensive experience with several hedge fund wind-downs, its experience with marketing illiquid assets across a broad spectrum of alternative investments, and its breadth of knowledge of potential investors to create a competitive environment to maximize recovery. *See* Houlihan Opinion at 6.

E. The Receivership Estate’s Preparation for the Sale of LC Energy

Since the Receiver’s appointment, the Receiver and her retained professionals have

analyzed the legal, financial, regulatory and business issues relating to PPCO's investment in LC Energy and the potential options for disposition thereof. *See* Cyganowski Dec., ¶ 29. Assisting the Receiver's team in that effort was (i) the Mine operator retained by LC Energy prior to the commencement of the receivership, Quest Energy Inc. ("*Quest*") – a best-in-class manager of thermal and metallurgical coal operations throughout the Illinois and Appalachian basins – (ii) Houlihan Lokey, (iii) Goldin and Associates and (iv) Indiana legal counsel with expertise in bankruptcy matters and local real estate. *See id.* While the Receiver worked with her team to position LC Energy for sale, she continued to make monthly payments in the amount of approximately \$80,000-\$110,000 per month to maintain the value of the Mine until it can be monetized.³ *See* Cyganowski Dec., ¶ 30. Since the commencement of the Receivership Case, total disbursements of approximately \$1.2 million have been made to maintain the value of LC Energy. *See id.* Without making such required payments, all value that might be achieved through the Sale would be lost. *See id.*

Initiating a sale process for LC Energy has been complicated given the lien disputes discussed above. *See* Cyganowski Dec., ¶ 31 and Section II.B herein. Because the purported lienholders assert that the 363 Sale Order failed to resolve the issue of what liens may still attach to the Acquired Assets and whether PPCO had an interest in all of the Acquired Assets, the Receiver's team has spent months engaging with numerous purported lien and claim holders in an effort to resolve the purported Encumbrances otherwise diminishing the value of LC Energy. *See* Cyganowski Dec., ¶ 31. Notwithstanding these efforts, the Receiver has been unable to

³ The monthly expenses to upkeep the Mine include (i) wages and benefits for employees of Quest, the entity responsible for maintenance of the Mine, (ii) fuel, power and utilities at the Mine, (iii) bonding expenses, (iv) security, (v) management fees and (vi) certain other miscellaneous costs and expenses associated with the maintenance of the Mine.

settle all of the alleged Encumbrances on LC Energy's assets. *See id.*

In light of the forgoing, as set forth below, the Receiver, in her business judgment, has determined that a sale of LC Energy through this Court and under the Procedures outlined below will maximize the value of the asset while providing all asserted lien and claim holders with a single forum in which to assert their claims. *See Cyganowski Dec.*, ¶ 32. Absent this relief, the Receiver expects a substantial reduction in the purchase price for LC Energy, the additional expenditure of significant resources to resolve the purported liens and claims across multiple jurisdictions and the continuing incurrence of the monthly maintenance disbursements discussed above in connection with the Mine, collectively materially diminishing the value available for the stakeholders in this case. *See Cyganowski Dec.*, ¶ 33.

III. THIS COURT MAY APPROVE A SALE OF RECEIVERSHIP ASSETS FREE AND CLEAR OF ENCUMBRANCES

This Court's power to supervise an equity receivership and determine the appropriate actions to be taken in its administration is extremely broad. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002) (a receivership court has broad equitable authority to issue orders necessary for the proper administration of the estate and all the assets and property thereof). This wide discretion derives from this Court's inherent powers of an equity court to fashion relief. *See Securities Exch. Comm'n v. Elliott*, 953F.2d1560, 1566 (11th Cir. 1992); *Securities Exch. Comm'n v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver through the Motion falls squarely within those powers. This is especially true where, as here, the sale represents the Receiver's exercise of her sound business discretion and judgment as a course of action that is in the best interests of the Receivership Estate. The Receiver is entitled to great deference in this regard. *See In re JFD Enter., Inc.*,

2000 WL 560189, *5 (1st Cir. 2000) (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”) (internal citations omitted).

In addition to the equitable powers vested in this Court, this Court is conferred with the statutory authority to authorize the sale of real property in a receivership case “upon such terms and conditions as the court directs.” 28 U.S.C. § 2001(a). In turn, significant authority establishes that a receivership court may order the sale of receivership property free and clear of liens and encumbrances. In *Mellen v. Moline Malleable Iron Works*, the U.S. Supreme Court stated that “the removal of alleged liens or incumbrances upon property, the closing up of affairs of insolvent corporations, and the administration and distribution of trust funds, are subjects over which courts of equity have general jurisdiction.” 131 U.S. 352, 367 (1889). Following *Mellen*, courts within and outside of this district commonly enter orders approving sales of assets by receivers free and clear of Encumbrances. *See, e.g., SEC v. Princeton Econ. Int’l Ltd.*, 2008 WL 7826694, *5 (S.D.N.Y. Sept. 30, 2008) (approving sale of assets free and clear of all liens under a plan of distribution); *Securities and Exchange Commission v. Steven Byers, et al.*, Case No. 08-07104 (U.S. Dist. Ct. S.D.N.Y. 2008), Docket No. 989 (March 28, 2014 Order Confirming Sale of the Corinth Property); *Securities and Exchange Commission v. McGinn, Smith & Co., Inc., et al.*, Case No. 10-00457 (U.S. Dist. Ct. N.D.N.Y. 2010), Docket No. 649 (November 25, 2013 Order Approving Motion ... Free and Clear of Liens, Claims and Encumbrances); *Securities and Exchange Commission v. Steven Byers, et al.*, Case No. 08-07104 (U.S. Dist. Ct. S.D.N.Y. 2008), Docket No. 862 (January 29, 2013 Order to Confirm Sale of Executive Plaza Property); *The Privatebank and Trust Company v. Global Storage Solutions, LLC, et al.*, Case No. 15-01600

(U.S. Dist. Ct. N.D.IL 2015), Docket 49 (May 1, 2015 Order Confirming Sales of Substantially all of ... Receivership Entities Assets Free and Clear of Liens, Claims, Encumbrances and Interests ...); *John T. Callahan & Sons Inc. v. Dykeman Elec. Co. Inc.*, 266 F.Supp.2d 208 (D. Mass. 2003) (recognizing a court's implied power to sell assets free and clear of creditors' claims in a private sale made after notice and an opportunity to be heard.⁴

Based on the forgoing, the Receiver requests this Court's authority to sell LC Energy free and clear of all Encumbrances. While the Receiver contemplates that the Sale Approval Order will specifically approve such Sale, providing the Receiver with the authority to consummate the Sale free and clear of all Encumbrances in the Procedures Order is expected to provide potential bidders with comfort that their purchase will grant them clean title to LC Energy.

In accordance with the LC Energy Claims Procedures described below, all purported lien and claim holders will have the opportunity to assert their Claim to any net cash proceeds from the Sale. Indeed, the Receiver proposes that until all alleged secured Claims against LC Energy that are reasonably asserted to be prior in right to that of PPCO are resolved by agreement with the Receiver or by an order of this Court, the Receiver will not disburse the net proceeds of the Sale. However, the Receiver does request that the Sale Approval Order provide the Receiver with the authority to (i) pay the customary and reasonable costs and expenses of the Sale at closing, which include, but are not limited to, the fees and expenses of Houlihan Lokey as previously approved by this Court and (ii) reimburse PPCO for the DIP Loan and for all post-receivership costs and expenses it paid for, or on behalf of, LC Energy.

⁴ Each of the orders cited in this paragraph are attached hereto as **Exhibit A**.

**IV. THIS COURT SHOULD APPROVE THE
PROPOSED PROCEDURES FOR THE SALE OF LC ENERGY**

Upon entry of the Procedures Order, the Receiver, through Houlihan Lokey, will commence marketing LC Energy to promptly locate the highest or otherwise best offer. To that end, the Receiver seeks approval from this Court to designate a bid for LC Energy as the “stalking horse” bid (the bidder being a “*Stalking Horse*” and such agreement being a “*Stalking Horse Agreement*”) to serve as a baseline bid for LC Energy. Such relief is warranted here to induce an appropriate bid that will preserve value and incentivize other parties to pursue the assets to avoid a competitive disadvantage. *See* Cyganowski Dec., ¶ 34. Because the Stalking Horse that might be selected may have expended meaningful time, money and energy pursuing and negotiating the Sale transaction, the Receiver also requests authority to provide the Stalking Horse with certain customary and reasonable bid protections, including, but not limited to, a breakup fee not to exceed 5% of the proposed purchase price, that the Receiver determines, in her business judgment, are best designed to maximize the value of LC Energy. *See id.* The Receiver submits that the benefit to the Receivership Estate and its stakeholders for providing a market-based indication of value to open any Auction and from the increased certainty of a transaction will far outweigh the cost of any breakup fee payable to the Stalking Horse if it is not chosen as the Successful Bidder. *See id.*

A. The Proposed Bidding Procedures

Upon the Receiver’s selection of a Stalking Horse, the Receiver requests that the Bidding Procedures attached to the Procedures Order as Exhibit 1 govern the sale of LC Energy. The Bidding Procedures will facilitate a fair and efficient sales process that allows the Receiver to identify the highest or otherwise best offer(s) for LC Energy by providing any prospective

bidders and other interested parties an opportunity to outbid the Stalking Horse under an orderly and uniform mechanism. *See* Cyganowski Dec., ¶ 35. The Receiver believes that the Bidding Procedures are not likely to dissuade any serious potential bidder and will result in the best and highest offer reasonably available for LC Energy. *See id.*

B. The Proposed LC Energy Claims Procedures

As described above, the procedural history of PPCO's acquisition of Lily Group's assets through LC Energy left certain issues unresolved. For example, while the Bankruptcy Court authorized LC Energy to credit bid its secured debt to acquire the Mine and related rights, there has been no resolution of:

- the amount and priority of MacAllister's alleged liens against what was then Lily Group's assets;
- the amount and priority of the Stuckert & Howell liens;
- the allegations made by LC Energy through the Lien Challenge Complaint; and
- whether the 363 Sale Order extinguished the liens and claims of MacAllister, Stuckert & Howell and all other purported lien holders.⁵

While the Receiver's preference would have been to sell LC Energy as-is, where-is, the competing claims against the assets proposed to be sold made that impossible. *See* Cyganowski Dec., ¶ 37. And so, the Receiver initially authorized her team, including Indiana counsel, to resolve the liens and claims set forth above and certain other asserted claims to better position

⁵ In addition to the forgoing, the Bankruptcy Court did not resolve the Committee's claims that PPCO's secured debt was invalid and PPCO's liens did not extend to the Non-Collateralized Leases. However, the Committee does not assert a secured claim against LC Energy and so, the Committee's claims do not need to be addressed at this time. Moreover, the Committee's claims are pre-receivership in nature and so, those claims can and will be resolved in connection with any plan of distribution the Receiver promulgates.

LC Energy for sale. *See id.* Despite expending material time and resources to do just that, the Receiver has been unable to consensually settle the various set of claims being asserted. *See Cyganowski Dec.*, ¶ 38. Complicating the Receiver's efforts was the multi-jurisdictional litigation, the unwillingness of certain parties to engage in negotiations and the non-responsiveness of former purported lien holders. *See id.* Considering these difficulties, the Receiver determined that adopting procedures for the filing of claims against LC Energy and providing for the resolution thereof *after the Sale* was the most expedient, cost effective and equitable way in which to both position LC Energy for sale while preserving the rights of the claimholders. *See id.* To that end, the Receiver proposes that the LC Energy Claims Procedures set forth below be approved:

- (i) The deadline for filing a Claim (defined below) is proposed to be 45 days after entry of the Procedures Order (the "***LC Energy Claims Bar Date***").
- (ii) For purposes of the Procedures Order, a "***Claim***" will be defined as: (1) a claim to a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, *against LC Energy and/ or its assets*; or (2) a claim to a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured, *against LC Energy and/ or its assets*.
- (iii) Any Claim asserted against LC Energy would be required to be served via electronic and regular mail no later than the LC Energy Claims Bar Date on: (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlp.com.
- (iv) Any Claim being asserted must state the Claim amount, state with specificity the basis for the Claim and provide all documentation in support thereof. Such documentation may include but is not limited to: copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mechanic's liens, mortgages, security agreements, evidence of perfection of lien and other documents evidencing the amount and basis of the claim. If such supporting documentation is not available,

the claimant must attach to the Claim an explanation of why the documentation is unavailable.

- (v) The Procedures Order would provide that **any claimant who is required to submit a Claim, but fails to do so by the LC Energy Claims Bar Date, shall be forever barred, estopped, and enjoined to the fullest extent allowed by applicable law from asserting, in any manner, such Claim against LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property; shall not be permitted to object to any distribution plan proposed by the Receiver on account of such Claim; shall be denied any distributions under any distribution plan implemented by the Receiver on account of such Claim; and shall not receive any further notices on account of such Claim. Further, if a claimant is required to submit a Claim but fails to do so by the LC Energy Claims Bar Date, then LC Energy and its successors, agents, assigns, officers, directors, shareholders, employees and representatives and its property will be, and hereby are, discharged from all indebtedness or liability with respect to such Claim.**

To reconcile the Claims filed against LC Energy and/or its assets, the Receiver requests that predicated upon a sale of LC Energy the following procedures be approved by this Court:

- (i) For each Claim timely and properly filed by the LC Energy Claims Bar Date, the Receiver will serve a written determination as to whether the Claim should be allowed as filed, allowed in a reduced amount, disallowed or be subject to the provision of additional documents to the asserted Claim holder via U.S. regular mail or via electronic mail (the “*Receiver’s Claim Determination*”).
- (ii) If the Receiver’s Claim Determination finds that the Claim should be allowed in a reduced amount, disallowed or be subject to the provision of additional documents, the asserted Claim holder will have thirty (30) days to serve a response to the Receiver’s Claim Determination via electronic and regular mail on (i) Erik Weinick, Esq., Otterbourg, P.C., 230 Park Avenue, New York, NY 10169, Email: eweinick@otterbourg.com and (ii) Brent Weisenberg, Esq., Platinum Partners, 230 Park Avenue, Third Floor West, Suite 323, New York, NY 10169, Email: bweisenberg@platinumlp.com.
- (iii) The Receiver will then have thirty (30) days to serve a reply on the asserted Claim holder as set forth in subsection (i) above.
- (iv) If the Receiver and the claimant are unable to agree on the allowance or disallowance of a Claim or the priority thereof, the Receiver will file a motion with this Court attaching the Receiver’s Claim Determination, the asserted Claim holder’s response and the Receiver’s reply, requesting that this Court resolve such dispute without additional briefing by the Receiver or the Claimant.

Alternatively, the Receiver will seek to have this Court direct mandatory mediation with respect to resolution of the disputes.

Receivership courts commonly enter an order limiting the time within which claims must be presented. *See* Ralph E. Clark, *Clark on Receivers* § 652, at 1142 (3rd ed. 1992) (citing *Chicago Title & Trust Co. v. Fox Theatres Corp.*, 91 F.2d 907 (2d Cir. 1937); *People of New York v. Hopkins*, 18 F.2d 731 (2d Cir. 1927)); *see also SEC v. Princeton Econ. Int'l Ltd*, 2008 WL 7826694 (S.D.N.Y. Sept. 30, 2008); *SEC v. Cook*, 2003 WL22272065 (N.D. Tex. Sept. 30, 2003). Such an order limiting the time within which claims must be submitted has been deemed to be necessary to “lay the foundation for the court to order payments to creditors and distribution to those entitled to receive.” *Id.* § 651, at 1142.

Under the Receivership Order, the Receiver is directed to determine the extent of liabilities the Receiver believes to be the legal obligations of the Receivership Estate. *See* Receivership Order, ¶ 47. In this instance, the Receiver seeks only to set a claims bar date for those claimants seeking to assert a Claim against LC Energy, which is Receivership Property. The Receiver has determined that establishment of the LC Energy Claims Procedures is critically important to the Sale process, the fair distribution of the net sale proceeds of the Sale among claimants and the efficient administration of the receivership in general. *See* Cyganowski Dec., ¶ 39. With potentially limited net Sale proceeds available for distribution, the LC Energy Claims Procedures will ensure that the available proceeds are distributed only to Claimants that hold valid Claims in the order of their priority. *See id.* Were this Court not to grant this relief, the Receiver would be confronted with having to litigate the validity and priority of Encumbrances against LC Energy’s assets across multiple jurisdictions while being forced to continue making maintenance payments between \$80,000-\$110,000 per month. *See* Cyganowski Dec., ¶ 40. The expected time and expense of the litigations and the maintenance payments could potentially

exceed the value of the very assets the Receiver seeks to sell. *See id.* And so, approval of the LC Energy Claims Procedures is the best and most equitable way to assure that the value of LC Energy is maximized for all stakeholders and that all lien holders can assert the amount and priority of their Claims under a set of procedures designed to save expenses and produce finality. *See id.*

C. The Proposed Form and Manner of the Notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date Should be Approved

To provide all interested parties with notice of the Sale and all known creditors of LC Energy and purported lienholders in LC Energy's assets with adequate notice of the LC Energy Claims Procedures and the LC Energy Claims Bar Date, the Receiver requests approval of the following notice procedures, including approval of the form of such notices:

- Notice by Mail. The Receiver proposes to serve, within five (5) business days of entry of the Procedures Order, the form of notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date attached as Exhibit 2 to the Procedures Order (the "***Sale Notice***") by United States first class mail on (1) all known creditors of LC Energy at the address set forth in the Receivership Entities' books and records or as updated pursuant to a request by a creditor or by returned mail from the post office with a forwarding address; (2) any party known or reasonably believed to have asserted any Encumbrance or other interest in LC Energy's assets; (3) all parties to pending litigation against LC Energy (as of the date of entry of the Procedures Order); (4) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of LC Energy's assets; (5) the Internal Revenue Service and all applicable governmental units; and (6) such additional persons and entities deemed appropriate by the Receiver (collectively, the "***LC Energy Service List***").
- Notice by Publication. The Sale Notice will also be made available, within five (5) business days of entry of the Procedures Order, on the Receiver's website at <http://www.platinumreceivership.com>.
- In addition, within fourteen (14) calendar days of entry of the Procedures Order, the form of notice attached as Exhibit 3 to the Procedures Order (the "***Publication Notice***") will be published in Greene and Sullivan Counties in the State of Indiana

and in a newspaper with general circulation in the State of Indiana and other such publications that, in the Receiver's sole and absolute discretion, are reasonably calculated to provide notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date to potential claimants and purchasers.

The Receiver submits that the notice to be provided through the Sale and Publication Notice and the method of service proposed herein constitutes good and adequate notice of the Sale, the LC Energy Claims Procedures and the LC Energy Claims Bar Date. *See* Cyganowski Dec., ¶ 42. Accordingly, the Receiver requests that this Court approve the notice procedures and that no other or further notice of the Sale, the LC Energy Claims Procedures or the LC Energy Claims Bar Date is required.

D. The Proposed Procedures for Approval of the Sale to the Successful Bidder

After the Receiver selects a Successful Bidder, she proposes to provide all interested parties with additional notice of the Sale by filing with this Court a notice setting forth the identity of the Successful Bidder, the proposed purchase price and the material provisions of the proposed Sale transaction and attaching an affidavit(s) in support of the Sale and the proposed Sale Approval Order (the "*Successful Bidder Selection Notice*"). The Receiver will serve the Successful Bidder Selection Notice by United States first class mail on the LC Energy Service List and all parties in interest in this Case. The notice will provide that:

- (i) On or before seven (7) days after filing of the Successful Bidder Selection Notice (the "*Response Deadline*"), any party-in-interest wishing to be heard with respect to the selection of the Successful Bidder and approval of the Sale (other than parties named in the caption), must electronically deliver to the Receiver via the Receiver's email address (platinumreceiver@otterbourg.com), that party in interest's response (collectively, the "*Responses*"). **Parties in interest (other than parties named in the caption) shall not file Responses on the ECF docket in this action.**
- (ii) On or before two (2) business days after the Response Deadline, the Receiver will compile all the Responses she has received and will file the Responses under one docket entry on the ECF docket in the Receivership Case.

- (iii) The Receiver will then have no more than seven (7) days following the Response Deadline to file any reply in further support of the Sale.
- (iv) The Receiver proposes that this Court shall then either schedule a hearing to consider the Sale or decide to enter an order approving or denying the Sale without oral argument.

The Receiver believes that the forgoing notice procedures are reasonable and adequate under the circumstances because they are reasonably calculated to provide timely and adequate notice of the Successful Bidder for LC Energy and the terms of the proposed Sale to LC Energy's creditors and all other parties in interest that are entitled to notice. *See* Cyganowski Dec., ¶ 44. Indeed, these procedures are substantially similar to those approved by this Court in its *Order Adopting Protocols for Parties In Interest to Be Heard On Receiver Motions*. *See* Docket No. 271.

V. THIS COURT SHOULD APPROVE THE SALE AFTER THE SELECTION OF THE SUCCESSFUL BIDDER BY THE RECEIVER

As set forth above, the Receiver will request entry of the Sale Approval Order only after selecting the Successful Bidder and providing the Successful Bidder Selection Notice to the LC Energy Service List and all parties in interest in this Receivership Case. While the Receiver will provide additional facts in support of this portion of the Motion in connection with the Successful Bidder Selection Notice, the legal authority supporting approval of the Sale is set forth above. *See* Section III., *supra*. Here, the affidavits to be filed in support of the Successful Bidder Selection Notice will establish that a sale of LC Energy free and clear of Encumbrances in accordance with the Procedures outlined above and provided for in the proposed Sale Approval Order will provide for the highest or otherwise best recovery on the LC Energy asset for the Receivership Estate.

VI. CONCLUSION


For the reasons set forth herein and in the accompanying Cyganowski Dec., the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec., (a) authorizing the Receiver to sell the Receivership's rights in and to LC Energy free and clear of all Encumbrances; (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy or its assets and the resolution thereof; (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse and (f) granting such other and further relief as this Court deems appropriate.

Dated: New York, New York
December 6, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein
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Declined to Extend by S.E.C. v. One Equity Corp., S.D. Ohio, November 23, 2010

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Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court,
S.D. New York.

SECURITIES and EXCHANGE
COMMISSION, Plaintiff,

v.

PRINCETON ECONOMICS INTERNATIONAL
LTD., Princeton Global Management Ltd.
and Martin A. Armstrong, Defendants.

Commodity Futures Trading Commission, Plaintiff,

v.

Princeton Economics International Ltd.,
Princeton Global Management Ltd.
and Martin A. Armstrong, Defendants.

Nos. 99 Civ. 9667(PKC), 99 Civ. 9669(PKC).

|
Sept. 30, 2008.

Attorneys and Law Firms

Tancred V. Schiavoni, Esq., O'Melveny & Myers LLP, New York, NY, for Receiver, Alan Cohen, for Defendants Princeton Economics International Ltd., Princeton Global Management Ltd. and their subsidiaries and affiliates appointed by Order of the District Court for the Southern District of New York, dated September 13, 1999.

ORDER APPROVING PLAN OF FINAL DISTRIBUTION

P. KEVIN CASTEL, District Judge.

*1 This matter came before the Court on the Motion for Order Approving the Plan of Final Distribution (the "*Motion*"), filed by Alan M. Cohen, as Temporary Receiver appointed pursuant to this Court's Order dated September 13, 1999, as clarified by Order dated January

6, 2000 (the "*Receiver*"), seeking approval of the Plan of Final Distribution (attached hereto as **Exhibit 1** and as it may be amended, supplemented or otherwise modified from time to time in writing, the "*Plan of Final Distribution*"), and the settlements, releases and compromises contained therein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Plan of Final Distribution.

Adequate notice of the Motion, the hearing on the Motion and the date by which all claims had to be filed (the "*Bar Date*") was given by mailing or emailing a copy of the Motion and notice of the hearing on the Motion, and by mailing to such other Persons as are listed on the Certificates of Service filed by the Receiver. Further, notice of the Motion, the hearing on the Motion and the Bar Date was made by publication in the national editions of *USA Today* and such publication notice, together with the notices described in the preceding paragraph, are adequate and reasonable under the circumstances and no other or further notice is required or need be sent.

A hearing on the Motion was held on September 29, 2008 (the "*Approval Hearing*"), to consider approval of the Plan of Final Distribution, and all interested parties were given an opportunity to be heard, present evidence and object to the Motion. Based upon the record of the Approval Hearing and of these cases, the Court having reviewed the Motion and determined that the relief requested in the Motion is in the best interests of the Receivership Entities, their estates, their creditors and other parties in interest, and after due deliberation thereon, and good and sufficient cause appearing therefore:

The Court hereby FINDS that:

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, the Parties hereto, the administration of the Receivership Entities, and the distribution of the Receivership Property, including the assets sought to be distributed by the Receiver to the Princeton Noteholders hereby. Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The notice of the Motion, the deadline to object to the Motion, and the hearing on the Motion described above constitutes due, sufficient and timely notice to all persons entitled thereto. No other or further notice

of the Motion, the hearing on the Motion, or the request for entry of this Approval Order, is or shall be required. This Court hereby further finds that notice to an attorney for the holder of a claim constitutes notice to such holder for purposes of notice of the Motion, the Bar Date, the Approval Hearing, the Plan of Final Distribution, and the Approval Order.

*2 C. Pursuant to the Court's June 24, 2008 Order (Docket # 434), timely notice of the Bar Date was given by first class mail, electronic mail and publication in *USA Today* to all creditors, holders of claims, and other parties in interest, including, without limitation, Martin Armstrong, Martin Armstrong, Jr., Victoria Armstrong and Ida Armstrong. The form and manner of notice given of the Bar Date was reasonably calculated to give all parties-in-interest actual or constructive notice of the Bar Date.

D. The Bar Date provided for in the Plan, and as set by order of this Court dated June 24, 2008 (Docket # 434), was in the best interests of the Receivership Entities, their estates, their creditors, holders of claims and all other parties in interest.

E. No claims or proofs of claim were filed or asserted prior to the Bar Date, except for Proskauer Rose LLP's Proof of Claim and Memorandum in Support of Martin A. Armstrong's Settlement Agreement with the Commodity Futures Trading Commission (Docket # 438), which has been withdrawn pursuant to a stipulated agreement that is subject to Court approval, and the SEC's Limited Objection (Dkt. No. 440, Case No. 99 Civ. 9667(PKC)). Nor was any objection served or asserted to the classification of claims under the Plan.

F. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all parties in interest. To the extent that any person (i) either (a) received proper notice of these matters (or is represented by a person that received such notice) or (b) having had notice of these cases, elected not to request notices regarding these cases, and (ii) failed to object to the Motion and the entry of this Approval Order, then such persons hereby shall have no right to file or prosecute an appeal of this Approval Order.

G. The Princeton Noteholders that have suffered losses as a result of the collapse of the Princeton Notes scheme have waited a significant period of time to receive a final

distribution of the assets held in the Receivership, which held investor funds frozen by the entry of the Freeze and Receivership Orders.

H. The Receivership Property is property of the Receivership Estates, and this Court has the jurisdiction and power to approve the Plan of Final Distribution and the compromises, releases and injunction contained therein.

I. The Receiver has due and proper authority to enter into the Plan of Final Distribution and perform all of the obligations thereunder. No consents or approvals, other than this Approval Order, are required for the Receiver to perform all of their obligations thereunder, including the sale and transfer of the Loveladies Property or any other Receivership Property. The consummation of the Plan of Final Distribution by the Receiver does not conflict, contravene, or cause a breach, default or violation of any law, rule, regulation, contractual obligation or organizational or formation document.

*3 J. The compromises contained in the Plan of Final Distribution are a valid and proper exercise of the reasonable business judgment of the Receiver. The Bar Date imposed by the Court's June 24, 2008 Order and Section III of the Plan of Final Distribution, and the injunction and releases to be made pursuant to Section VII of the Plan of Final Distribution, are appropriate and should be approved. The Plan of Final Distribution would not be possible without the benefit of the Bar Date and the releases in the Plan of Final Distribution, and the injunction contained in the Plan of Final Distribution and in this Approval Order.

K. The Plan of Final Distribution results in substantial benefits to the Receivership Entities, Receivership Estate and holders of claims, including the Princeton Noteholders, by (i) avoiding complex litigation; and (ii) implementing a process for distributing Receivership Property for the benefit of the estate and holders of claims. The Plan of Final Distribution is fair and equitable with respect to the Receivership Entities and their shareholders and the persons who have asserted, and who might subsequently assert, claims, including the Princeton Noteholders.

L. Considering all of the factors before the Court, as discussed in the Motion, the provisions and conditions of the Plan of Final Distribution are in the best

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interests of the Receivership Entities, their estates, their creditors, holders of claims and all other parties in interest. The Receiver has demonstrated good, sufficient and sound business purposes, causes and justifications for the relief requested in the Motion and the approval of the transactions contemplated thereby.

M. The Court further fully adopts and makes each of the findings as set out in Section 6.1(a)(i) through (xii) of the Plan of Final Distribution.

N. This Approval Order is “final” within the meaning of 28 U.S.C. § 158(a)(1).

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion shall be and is hereby GRANTED in all respects, and the Plan of Final Distribution is hereby approved in all respects. For the reasons set forth herein and on the record at the hearing on the Motion, all objections and proofs of claim that have not been withdrawn, resolved, waived or settled are hereby overruled on the merits and all reservations of rights included therein, are overruled on the merits.

2. The failure specifically to include or reference any particular term or provision of the Plan of Final Distribution in this Approval Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Plan of Final Distribution be authorized and approved in its entirety.

3. The terms and provisions of the Plan of Final Distribution, together with the terms and provisions of this Approval Order, shall be binding in all respects upon all persons or entities, and the persons or entities who have asserted, and who might subsequently assert, claims or demands, against the Receivership Entities, Receivership Estates, Receiver Property and/or the Receiver, his agents, attorneys, accountants, consultants and employees, including, without limitation, O'Melveny & Myers LLP and PricewaterhouseCoopers LLP, other creditors, shareholders of any of the Receivership Entities, and all interested parties, administrative agencies, governmental units, federal, state and local officials maintaining any authority with respect to the Receivership Property, and their respective successors and assigns.

*4 4. The notice of the Bar Date described above constitutes due, sufficient and timely notice to all persons entitled thereto. No other or further notice of the Bar Date is or shall be required. This Court hereby further finds that notice to an attorney for the holder of a claim constitutes notice to such holder for purposes of notice of the Bar Date.

5. The Bar Date set by order of this Court dated for twenty (20) days before the originally scheduled September 3, 2008 hearing was fair and reasonable.

6. The Bar Date required proofs of claim by persons or entities with a claim or interest to have been filed with this Court, with a copy of such proof of claim simultaneously served upon counsel for the Receiver, David Marden, Esq., O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, New York 10036.

7. Proofs of claim not filed with the Court prior to the Bar Date are deemed not timely filed.

8. Any proofs of claim filed hereinafter will be deemed not timely filed.

9. All persons or entities with a claim that failed to file a proof of claim prior to the Bar Date and were not excused from filing a proof of claim under the Plan are forever barred, estopped, and permanently enjoined from (a) asserting a claim, whether directly or indirectly, against any of the Receivership Entities, Receivership Estates, Receivership Property or the Receiver, his agents, attorneys, accountants, consultants and employees, including, without limitation, O'Melveny & Myers LLP and PricewaterhouseCoopers LLP; (b) participating in any distribution in this case pursuant to the Plan or otherwise; and (c) receiving any further notices regarding any such claim, and further enjoined as specified in Section 7.1 of the Plan. All claims against the Receiver, his agents, attorneys, accountants, consultants and employees, including, without limitation, O'Melveny & Myers LLP and PricewaterhouseCoopers LLP, that arise from any act, omission, transaction, agreement, event or other occurrence prior to the Bar Date that relate to the Receivership, including the business, operations and management of the Receivership Entities, or to their conduct as professionals or advisors to any of the Receivership Entities, are thus forever barred, estopped, and permanently enjoined.

10. Yakult Honsha Company, Ltd. ("Yakult") and HSBC USA have reached an agreement on how to implement their prior settlement, under which Yakult assigned to HSBC USA rights with respect to the Princeton Liquidators, as applied to the amount advanced by the Receiver to the Princeton Liquidators under the Court's April 25, 2000 Order. The Court's April 25, 2000 Order shall be deemed satisfied by this assignment and the corresponding reduction of the amount set forth for Yakult in Column 6 of the Schedule attached as Exhibit 3 to the Plan. Thus, Column 6 of Exhibit 3 for Yakult shall be reduced by the amount that the Receiver advanced to the Princeton Liquidators under the Court's April 25, 2000 Order.

*5 11. The Stipulation of Settlement dated September 16, 2008, by and between the Receiver, Proskauer Rose LLP and Armstrong is hereby approved.

12. The Receiver is hereby authorized, empowered and directed to take all necessary and appropriate acts to carry out and implement the Plan of Final Distribution in accordance with its terms without further order of the Court. To the maximum extent permitted by applicable law, the Receiver, his agents, attorneys, accountants, consultants and employees, including, without limitation, O'melveny & Myers LLP and PricewaterhouseCoopers LLP, shall be held harmless and released from any damages or liability that may arise through the discharge of their duties under the Plan of Final Distribution.

13. The Plan of Final Distribution and this Approval Order constitute valid and binding obligations of the Receivership Entities and the Receivership Estates, which shall be enforceable in accordance with the terms thereof, and shall be binding on the Receivership Entities and the Receivership Estates, and any and all successors to and assigns of the Receivership Entities, and all present and future holders of claims against the Receivership Entities, Receivership Estates or Receivership Property, and all other parties in interest, as set forth in the Plan of Final Distribution.

14. The injunction and releases contained in Section 7 of the Plan of Final Distribution are hereby approved in all respects and shall be effective in accordance with the terms of the Plan of Final Distribution. All Claims released pursuant to the Plan of Final Distribution shall

be deemed dismissed and forever released as of the date of the entry of this Approval Order.

15. The Receiver is further authorized to consummate the provisions of the Plan of Final Distribution that concern the sale, transfer and conveyance, of the Loveladies Property and all other property of the Corporate Defendants as the Receiver deems appropriate in his discretion and judgment, free and clear of any interests, in accordance with the terms and subject only to the conditions specified herein and in the Plan of Final Distribution. The sale, transfer and conveyance of these rights and interests shall constitute a legal, valid and effective transfer free and clear of all claims, liens, encumbrances and interests of any kind or nature whatsoever.

16. The transactions contemplated by the Plan of Final Distribution, including, without limitation, the sale of the Loveladies Property and all other property of the Corporate Defendants as the Receiver deems appropriate in his discretion and judgment, free and clear of all Interests, are undertaken by the Receiver in good faith.

17. This Court shall retain jurisdiction over these cases to enforce this Approval Order and for all other purposes including, but not limited to, those described in Section 7 of the Plan of Final Distribution. Such jurisdiction shall be retained even if a Plan of Final Distribution is approved and/or the case is closed, and the case may be reopened for such purpose.

*6 18. The Plan of Final Distribution shall govern and control in the event of any conflict or inconsistency between the Plan of Final Distribution and the Approval Order or any other order of any type entered in (i) these cases, (ii) any subsequent bankruptcy case, or (iii) any related proceeding subsequent to entry of this Approval Order. The provisions of this Approval Order are non-severable and mutually dependent.

19. This Approval Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

IT IS SO ORDERED this 29th day of September, 2008.

2008 WL 7826694

All Citations

Not Reported in F.Supp.2d, 2008 WL 7826694

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

~~COURTESY COPY~~

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

STEVEN BYERS, JOSEPH SHERESHEVSKY,
WEXTRUST CAPITAL, LLC, WEXTRUST
EQUITY PARTNERS, LLC, WEXTRUST
DEVELOPMENT GROUP, LLC, WEXTRUST
SECURITIES, LLC, and AXELA HOSPITALITY,
LLC,

Defendants.

No. 08 Civ. 7104 (DC)

ECF Case

~~PROPOSED~~ ORDER CONFIRMING SALE OF
THE CORINTH PROPERTY

DC

On the motion of Timothy J. Coleman, duly appointed Receiver herein (the “Receiver”), for an Order Confirming Sale of the Corinth Property by private sale (the “Motion”), the Court has reviewed and considered (1) the Memorandum of Law in Support of Motion of Receiver for an Order Confirming Sale of the Corinth Property; (2) the Declaration of Michael L. Gorney in Support and the exhibits thereto; and (3) this Court’s prior Orders.

Based on consideration of the foregoing, the Court finds that a proper showing has been made for the relief granted herein because the Receiver, in the exercise of his discretion, has determined that the Purchase and Sale Agreement between Corinth Industrial Holdings, LLC (“CIH”) and Caterpillar Inc. (the “Corinth Sale Agreement”) presents a

he may deem appropriate and/or necessary in closing the sale and transferring merchantable title to the Corinth Property to Caterpillar Inc. or any of its designees, assignees or transferees.


IT IS FURTHER ORDERED that this Court shall retain exclusive jurisdiction to enforce the terms and conditions of the Corinth Sale Agreement.

IT IS FURTHER ORDERED that the terms of the Order shall be binding upon each of (i) the Receiver, (ii) Caterpillar Inc. and any of its assignees, transferees or designees that take title to the Corinth Property, (iii) Regions Bank, (iv) the Defendants in the above-captioned matter, (v) any holder of a claim against or interest in the receivership estate, (vi) any investor in CIH and (vii) any other person receiving notice of the Motion and any affiliates, successors, or assigns of any of the foregoing.

IT IS FURTHER ORDERED that, notwithstanding any motion for reconsideration or time for appeal, the terms of this Order shall be immediately enforceable and the parties to the Corinth Sale Agreement may close the Corinth Property sale transaction at any time after entry of this Order.

SO ORDERED

Dated: 3-28-14
New York, New York



Hon. Denny Chin
United States Circuit Judge
Sitting By Designation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION :

Plaintiff,

vs.

Case No. 1:10-CV-457
(GLS/DRH)

McGINN, SMITH & CO., INC., :
McGINN, SMITH ADVISORS, LLC :
McGINN, SMITH CAPITAL HOLDINGS CORP., :
FIRST ADVISORY INCOME NOTES, LLC, :
FIRST EXCELSIOR INCOME NOTES, LLC, :
FIRST INDEPENDENT INCOME NOTES, LLC, :
THIRD ALBANY INCOME NOTES, LLC, :
TIMOTHY M. MCGINN, AND :
DAVID L. SMITH, GEOFFREY R. SMITH, :
Individually and as Trustee of the David L. and :
Lynn A. Smith Irrevocable Trust U/A 8/04/04, :
LAUREN T. SMITH, and NANCY MCGINN, :

Defendants,

LYNN A. SMITH and
NANCY MCGINN,

Relief Defendants. and

GEOFFREY R. SMITH, Trustee of the
David L. and Lynn A. Smith Irrevocable
Trust U/A 8/04/04,

Intervenor.

-----X
**ORDER APPROVING MOTION OF WILLIAM J. BROWN, AS RECEIVER,
FOR AN ORDER APPROVING PURCHASE AGREEMENT WITH HUNT
TELECOMMUNICATIONS, LLC WITH RESPECT TO THE PURCHASE OF
ALL LLC INTERESTS OF BENCHMARK COMMUNICATIONS, LLC FREE
AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

Upon the Motion of William J. Brown, as Receiver, for an Order Approving Purchase Agreement with Hunt Telecommunications, LLC with Respect to the Purchase of all LLC Interests of Benchmark Communications, LLC Free and Clear of Liens, Claims and Encumbrances (Docket No. 628) (“Motion”),¹ and a hearing having been held in connection

¹ Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

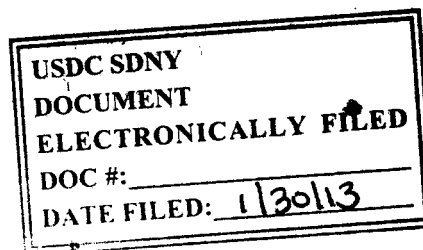
STEVEN BYERS, JOSEPH SHERESHEVSKY,
WEXTRUST CAPITAL, LLC, WEXTRUST
EQUITY PARTNERS, LLC, WEXTRUST
DEVELOPMENT GROUP, LLC, WEXTRUST
SECURITIES, LLC, and AXELA HOSPITALITY,
LLC,

Defendants,

- and -

ELKA SHERESHEVSKY,

Relief Defendant.



No. 08 Civ. 7104 (DC)

ECF Case

DC

~~PROPOSED~~ ORDER TO CONFIRM SALE OF
EXECUTIVE PLAZA PROPERTY

On the motion of Timothy J. Coleman, duly appointed Receiver herein (the "Receiver"), for an Order Confirming Sale of the Executive Plaza Property by private sale (the "Motion"), the Court has reviewed and considered (1) the Memorandum of Law in Support of Motion of Receiver for an Order Confirming Sale of the Executive Plaza Property; (2) the Declaration of Michael Gorney in Support and the exhibits thereto; and (3) this Court's prior Orders.

Based on consideration of the foregoing, the Court finds that a proper showing has been made for the relief granted herein because the Receiver, in the exercise of his discretion, has determined that the Purchase and Sale Agreement between Executive Plaza, LLC and RL Executive Plaza, LLC (the "Executive Plaza Sale Agreement") and the amendment thereto (the "First Amendment to Purchase and Sale Agreement") present a

reasonable price for the property located at 1850 Business Park Drive and 151 West Dunbar Cave Road in Clarksville, Tennessee (the "Executive Plaza Property").

The Court has jurisdiction over the subject matter of this motion and good and sufficient notice of this motion has been provided to all parties entitled thereto pursuant to the Court's prior orders.

NOW THEREFORE

IT IS HEREBY ORDERED that the Receiver's motion is granted in all respects and objections, if any, are overruled to the extent such objections have not been previously withdrawn, waived, or settled.

No objections have been submitted. (DC)

IT IS HEREBY ORDERED that, pursuant to the Court's orders, the Receiver, acting on behalf of Executive Plaza, LLC has authority to sell the Executive Plaza Property and convey good and merchantable title to the same.

IT IS FURTHER ORDERED that the sale of the Executive Plaza Property is hereby confirmed pursuant to the terms of the Executive Plaza Sale Agreement and the First Amendment to the Purchase and Sale Agreement, free and clear of all claims, liens, and encumbrances thereon and interests therein except as otherwise set forth in the Executive Plaza Sale Agreement and the First Amendment to the Purchase and Sale Agreement and any attachments thereto.

IT IS FURTHER ORDERED that the Receiver is hereby authorized to take any action and execute any documents he may deem appropriate and/or necessary in closing the sale and transferring merchantable title to the Executive Plaza to RL Executive Plaza, LLC or any of its designees, assignees or transferees.

IT IS FURTHER ORDERED that this Court shall retain exclusive jurisdiction to enforce the terms and conditions of the Executive Plaza Sale Agreement and the First Amendment to the Purchase and Sale Agreement.

IT IS FURTHER ORDERED that the terms of the Order shall be binding upon each of (i) the Receiver, (ii) RL Executive Plaza, LLC and any of its assignees, transferees or designees that take title to the Executive Plaza Property, (iii) the Defendants in the above-captioned matter, (iv) any holder of a claim against or interest in the receivership estate, (v) any investor in Executive Plaza, LLC and (vi) any other person receiving notice of the Motion and any affiliates, successors, or assigns of any of the foregoing.

IT IS FURTHER ORDERED that, notwithstanding any motion for reconsideration or time for appeal, the terms of this Order shall be immediately enforceable and the parties to the Executive Plaza Sale Agreement and the First Amendment to the Purchase and Sale Agreement may close the Executive Plaza Property sale transaction at any time after entry of this Order.

SO ORDERED

Dated: 1-29-13
New York, New York



Hon. Denny Chin
United States Circuit Judge
Sitting by Designation

KD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THE PRIVATEBANK AND TRUST COMPANY, as)
Administrative Agent,)

Plaintiff,)

v.)

Case No. 1:15-CV-01600

GLOBAL STORAGE SOLUTIONS, LLC (F/K/A/
BELL VENTURES, LLC), ALL STATE TANK
MANUFACTURING, L.L.C., USA TANK SALES
& ERECTION COMPANY INC., M & W TANK
CONSTRUCTION CO., C&C TANK ERECTORS
LLC, TOTAL TANKS, LLC, and TANK
HOLDINGS, INC.)

Honorable Sara L. Ellis

Defendants.)

**ORDER CONFIRMING SALES OF SUBSTANTIALLY ALL OF
CERTAIN OF THE RECEIVERSHIP ENTITIES' ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES
AND INTERESTS AND GRANTING RELATED RELIEF**

This matter coming before the Court on the Motion of Tank Operations, LLC (the "Receiver"), not in its corporate capacity, but solely as court appointed receiver in this action for Global Storage Solutions, LLC ("Global Storage"), All State Tank Manufacturing, L.L.C. ("All State"), USA Tank Sales and Erection Company, Inc. ("USA Tank"), M & W Tank Construction Co. ("M & W"), Total Tanks, LLC ("Total Tanks"), C&C Tank Erectors LLC ("C&C"), and Tank Holdings, Inc. ("Tank Holdings" and, collectively, the "Receivership Entities," "Borrowers" or "Defendants") for Entry of an Order Confirming Sales of Substantially All of Certain of the Receivership Entities' Assets Free and Clear of All Liens, Claims, Encumbrances

and Interests and Granting Related Relief, filed by the Receiver on April 24, 2015 (the “Motion”)¹:

THE COURT HEREBY FINDS AND DETERMINES AS FOLLOWS:

A. Jurisdiction and Venue²

This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1). Venue is proper in this District and in this Court pursuant to 28 U.S.C. § 1391.

B. Final Order

This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). The Court expressly (i) finds that there is no just reason for delay in the implementation of this Order and (ii) directs entry of judgment as set forth herein.

C. Statutory Predicates

The statutory predicates for the relief requested herein are 28 U.S.C. § 754, 28 U.S.C. § 959(b), 28 U.S.C. § 1692, 28 U.S.C. § 2001 and sections 9-610 through 9-613, 9-617, 9-619 and 9-623 through 9-628 of the Uniform Commercial Code, as adopted by the State of Illinois (810 ILCS 5/9-610 through 810 ILCS 5/9-613, 810 ILCS 5/9-617, 810 ILCS 5/9-619 and 810 ILCS 5/9-623 through 810 ILCS 5/9-628) (the “UCC”).

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

² All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. Notice of Sales and Sale Hearing

As evidenced by the Notice of Motion and attached Certificate of Service filed with this Court contemporaneously herewith, proper, timely, adequate and sufficient notice of the Motion, the Sales and the Sale Hearing, and a reasonable opportunity to object or be heard with respect to the Motion, has been provided to and upon the following parties:

- a. all creditors of the Receivership Entities known to the Receiver who could possibly assert a lien (including any security interest), claim, right, interest or encumbrance of record against all or any portion of the Purchased Assets;
- b. counsel to the Lender;
- c. counsel to the Subordinate Lender,
- d. counsel to all parties who have filed an appearance in this case;
- e. counsel to Tarsco Bolted Tank Inc., a Delaware corporation (the "Purchaser");
- f. counsel to any known secured lenders;
- g. all applicable federal and state taxing authorities of the Receivership Entities which, as a result of the sale of the Purchased Assets, may have claims, contingent or otherwise, in connection with the Receivership Entities' ownership of the Purchased Assets or have any known interest in the relief requested by the Motion;
- h. all known interest holders of the Receivership Entities;
- i. all parties who submitted an offer to buy the Purchased Assets;
- j. all parties to any pending litigation in which any of the Receivership Parties is a party; and
- k. all customers who have made a cash deposit with the Receivership Entities (collectively the "Notice Parties").

The Receiver also provided proper notice of the Real Estate Sale, as required pursuant to 28 U.S.C. § 2001(b) by publishing notice of the Real Estate Sale in the following newspapers:

(i) Neosho Daily News, a newspaper of general circulation covering Southwestern Missouri, the area in which the Goodman Property is located, (ii) Grove Sun, a newspaper of general

circulation covering Delaware County the area in which the Grove Property is located, (iii) Joplin Globe, a newspaper of general circulation covering fourteen counties in southwestern Missouri (collectively, the “Newspapers”), with each notice being published at least ten days prior to the date of this Order.

The Lender timely provided all notices of the UCC Sale which are required under the UCC to all required parties. The UCC Notice conformed with the requirements of the UCC, including but not limited to the requirements of sections 9-610 through 9-613.

The foregoing notices were sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Sales, or the Sale Hearing is required.

E. Good Faith of Purchaser

The Purchaser, its affiliates and their respective representatives are purchasing the Purchased Assets in good faith and have proceeded in good faith in all respects in connection with this proceeding in that: (a) the Purchaser recognized that the Receiver was free to deal with any other party interested in acquiring the Purchased Assets; (b) all payments to be made by the Purchaser in connection with the Sales have been disclosed; (c) no common identity of directors or controlling stockholders exists between the Purchaser and any of the Receivership Entities; (d) the negotiation and execution of the Asset Purchase Agreement was at arm’s length and in good faith; and (e) the Purchaser has not acted in a collusive manner with any person.

F. Authority

The Receiver has the (i) full power and authority to execute the Asset Purchase Agreement, (ii) has all of the power and authority necessary to consummate the Sales and to cause USA Tank to sell, transfer, assign and convey and deliver to the Purchaser all of the respective rights, title, and interest of USA Tank in and to that certain Commercial Lease

Agreement dated October 22, 2012 by and between Applied Products, L.L.C. (“Landlord”) and USA Tank (the “Lease”) to the Purchaser, and (iii) no consents or approvals, other than those expressly provided for in the Asset Purchase Agreement, are required to consummate such Sales.

G. Highest or Best Offer

The Purchaser’s bid for the Purchased Assets, as memorialized in the Asset Purchase Agreement, constitutes the highest or best offer received for the Purchased Assets. The Receiver engaged in reasonable and appropriate marketing of the Purchased Assets. The Receiver’s determination that the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Receiver’s business judgment.

H. Business Justification

The Receiver has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sales.

I. Requirements under 28 U.S.C. § 2001(b)

Because the Purchaser’s offer for the Real Estate³ is the highest and best offer the Receiver could obtain for the Real Estate, the best interests of the Receivership Entities’ estates will be served by confirming the Real Estate Sale. The Receiver obtained two current appraisals from disinterested persons for each of the two parcels included in the Real Estate, and this Court previously waived the requirement that the Receiver obtain a third appraisal. In addition, the Receiver produced a third appraisal for each of the Real Estate parcels which the Lender used in providing prior financing to certain of the Receivership Entities. The price being offered by the Purchaser for the Real Estate is more than two-thirds of the appraised value under any of the

³ The Real Estate is defined as both parcels of real property described in Exhibit A to this Order.

appraisals produced by the Receiver for the Real Estate. No bona fide offers were received by the Receiver for the Real Estate which exceeded the Purchaser's offer.

J. Requirements of 28 U.S.C. § 754. The Receiver has filed the Complaint, the Receivership Order in this matter in the district court for each district in which property of the Receivership Entities is located.

K. No Fraudulent Transfer

The consideration provided by the Purchaser pursuant to the Asset Purchase Agreement for its purchase of the Personal Property and the Real Estate constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and under the laws of the United States and any individual state, territory, possession, or the District of Columbia. The Purchaser is not a mere continuation, and is not holding itself out as a mere continuation, of any of the Receivership Entities or their respective estates, and there is no continuity between the Purchaser and any of the Receivership Entities. Neither of the Sales amounts to a consolidation, merger, or de facto merger of the Purchaser and any of the Receivership Entities.

The Asset Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code, under the laws of the United States or any individual state, territory, possession, or the District of Columbia, or any foreign country. Neither the Receiver nor the Purchaser (nor its affiliates) is entering into the transaction contemplated by the Asset Purchase Agreement fraudulently for the purpose of statutory or common law fraudulent conveyance and fraudulent transfer claims.

L. Validity of Transfer

The transfers of the Personal Property and the Real Estate to the Purchaser will be legal, valid and effective transfers of the Personal Property and the Real Estate, and will vest the Purchaser with all right, title, and interest of the Receiver and the Receivership Entities in and to the Personal Property and the Real Estate.

M. Sales Free and Clear of All Liens, Claims, Encumbrances and All Other Interests.

The Personal Property and the Real Estate transferred to the Purchaser pursuant to the Sales are free and clear of all liens, encumbrances, pledges, mortgages, deeds of trust, security interests, claims, leases, charges, options, rights of first refusal, easements, servitudes, proxies, voting trusts or agreements, and transfer restrictions under any agreement in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed (collectively, the “*Interests*”), except for any new liens granted to the Lender in connection with the Purchaser’s financing of the transactions contemplated by the Asset Purchase Agreement, and except for the Permitted Encumbrances (as such term is defined in the Asset Purchase Agreement). Those holders of liens, claims, encumbrances, or other Interests in, to, or against the Purchased Assets who did not object, or who withdrew their objections, to the Sales or the Motion are deemed to have consented thereto.

The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the Sales if they were not free and clear of all Interests of any kind or nature whatsoever, except as otherwise provided in the Asset Purchase Agreement, or if the Purchaser would, or in the future could, be held liable for any of the Interests.

N. Compelling Circumstances for Immediate Sales

The Receiver articulated compelling circumstances for approval of the Asset Purchase Agreement and the Sales. The Sales were necessary to reduce carrying costs of the Personal Property and the Real Estate for the Receivership Entities' estates and to preserve and maximize the going concern value of the Purchased Assets. The Receiver made a good and sufficient showing that it was necessary for the Sales to occur within the time period the Receiver identified in order to maximize the value received in connection with the Sales.

O. Commercial Reasonableness of the UCC Sale

The disposition of the Personal Property pursuant to the UCC Sale was made in conformity with reasonable commercial practices among dealers in the types of property that make up the Personal Property.

P. Management of the Receivership Entities

To date, the Receiver, and all persons and entities engaged or employed by the Receiver, including but not limited to Matthew English and Howard Bailey, in full compliance with 28 U.S.C. § 959(b), have managed and operated the property of the Receivership Entities according to the requirements of the valid laws of the states in which the property of the Receivership Entities are situated, in the same manner that the Receivership Entities would be bound to do if in possession thereof. The Receiver, and all persons and entities engaged or employed by the Receiver, including but not limited to Matthew English and Howard Bailey, have managed, preserved, protected, maintained, sold and surrendered assets of the estates of the Receivership Entities in a reasonable, prudent, diligent and efficient manner.

Q. Legal and Factual Bases

The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. **Motion**. The relief requested in the Motion is GRANTED to the extent set forth herein.
2. **Notice**. Proper and adequate notice of the hearing on the Motion was given to all interested parties who could possibly assert a lien (including any security interest), claim, right, interest or encumbrance against all or any portion of the Purchased Assets. The Receiver provided proper notice of the Real Estate Sale, as required pursuant to 28 U.S.C. § 2001(b), by publishing notice of the Real Estate Sale in the Newspapers, with each notice being published at least ten days prior to the date of this Order. The Lender provided timely and proper notice of the UCC Sale to all necessary parties as required under the UCC.
3. **Objections**. All objections to the Motion or the relief requested therein which have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits, except as may be provided in other orders of the Court.
4. **Approval of the Asset Purchase Agreement**. The Asset Purchase Agreement and all other ancillary documents, all of the terms and conditions thereof, and the Sales are hereby approved.
5. The Receiver and Lender are authorized and directed to take any and all actions necessary or appropriate to (i) consummate the Sales to the Purchaser pursuant to and in

accordance with the terms and conditions of the Asset Purchase Agreement and this Order, (ii) close the Sales as contemplated in the Asset Purchase Agreement and this Order, and (iii) execute and deliver, perform under, consummate, implement and close fully the transactions contemplated by the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement and the Sales.

6. This Order and the Asset Purchase Agreement shall be binding in all respects upon the Receiver, the Receivership Entities, their estates, all creditors of (whether known or unknown), and holders of equity interests in, the Receivership Entities, any holders of liens, claims, encumbrances or any other Interests against or on all or any portion of the Purchased Assets, the Purchaser, including all of the successors and assigns of the foregoing, and any trustee appointed in any Receivership Entity's chapter 7 or 11 case under the Bankruptcy Code, and shall not be subject to rejection. This Order and the Asset Purchase Agreement shall inure to the benefit of the Receiver, the Receivership Entities, their respective estates, their creditors, and the Purchaser, including all of the successors and assigns of the foregoing.

7. **Transfer of the Real Estate and Personal Property.** Pursuant to 28 U.S.C. §§ 959 and 2001(b), the Receiver is authorized to transfer the Real Estate to the Purchaser, by a private sale, and the private sale of the Real Estate is hereby confirmed. Upon the Closing, the Purchaser shall take title to and possession, ownership, direction and control of the Real Estate, and such transfer shall constitute an unconditional legal, valid, binding and effective transfer of the Real Estate and shall be free and clear of all liens, claims, encumbrances and all other Interests of any kind, except for any new liens granted to the Lender in connection with the Purchaser's financing of the transactions contemplated by the Asset Purchase Agreement, and

except for the Permitted Encumbrances (as such term is defined in the Asset Purchase Agreement).

8. The Receiver is authorized to cause USA Tank to sell, transfer, assign and convey and deliver to the Purchaser all of the respective rights, title, and interest of USA Tank in and to the Lease to the Purchaser, and the assignment is hereby confirmed. Upon the Closing, such transfer of USA Tank's interest in and to the Lease shall constitute an unconditional legal, valid, binding and effective transfer of the same and shall be free and clear of all liens, claims, encumbrances and all other Interests of any kind, except for any new liens granted to the Lender in connection with the Purchaser's financing of the transactions contemplated by the Asset Purchase Agreement, and except for the Permitted Encumbrances (as such term is defined in the Asset Purchase Agreement).

9. The sale of the Personal Property by the Lender to the Purchaser, pursuant to sections 9-610 through 9-613, 9-617, 9-619 and 9-623 through 9-628 of the UCC is hereby confirmed and found to be commercially reasonable pursuant to section 9-627 of the UCC. Upon the Closing, the Purchaser shall take title to and possession, ownership, direction and control of the Purchased Assets, and such transfer shall constitute an unconditional legal, valid, binding and effective transfer of the Purchased Assets and shall be free and clear of all liens, claims, encumbrances and all other Interests of any kind, except for any new liens granted to the Lender in connection with the Purchaser's financing of the transactions contemplated by the Asset Purchase Agreement, and except for the Permitted Encumbrances (as such term is defined in the Asset Purchase Agreement).

10. Except as expressly permitted or otherwise specifically provided by the Asset Purchase Agreement or this Order, any person holding liens, claims, encumbrances and all other

Interests in or to the Personal Property or the Real Estate arising under or out of, in connection with, or in any way relating to the Receivership Entities, the Personal Property or the Real Estate, prior to the transfer of the Personal Property and Real Estate to the Purchaser, hereby is forever barred, estopped and permanently enjoined from asserting against the Purchaser or its successors or assigns, its property, the Personal Property, or the Real Estate such person's liens, claims, encumbrances, and all other Interests in the Personal Property or the Real Estate.

11. Upon the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets to the Purchaser. Each and every federal, state, and local government agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement and the Sales. All persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Receiver and the Lender to sell and transfer the Real Estate and Personal Property, respectively, to the Purchaser in accordance with the terms of the Asset Purchase Agreement, the Sales, and this Order. A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel the liens, claims, encumbrances and all other Interests.

12. Except as otherwise provided in the Asset Purchase Agreement and this Order, the Purchased Assets shall be sold, transferred and delivered to Purchaser on an "as is, where is" or "with all faults" basis.

13. If any person, except for the Lender, that has filed statements or other documents or agreements evidencing liens, claims, encumbrances and all other Interests in or to the Real Estate or Personal Property shall not have delivered to the Receiver prior to the closing of the

Sales, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens, claims, encumbrances and all other Interests the person has or may assert with respect to the Personal Property or the Real Estate, the Receiver is hereby authorized and directed, and the Purchaser is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person with respect to the Personal Property or the Real Estate.

14. This Order is and shall be binding upon and govern the acts of all persons, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

15. Except as set forth in the Asset Purchase Agreement, the Sales will not subject the Purchaser to any liability for any Interests whatsoever, including, without limitation, statutory claims, that any of the foregoing parties or any other third party may have against the Receiver or Receivership Entities with respect to the operation of the Receivership Entities' businesses prior to the closing of the Sales or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity including, without limitation, any laws

affecting antitrust, successor, transferee or vicarious liability. All persons and entities, with the exception of the Lender, asserting or holding any Interests in or with respect to the Personal Property or Real Estate (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), howsoever arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests against the Purchaser. This Sales Order shall be effective as a determination that, as of the Closing, all Interests of any kind or nature whatsoever existing as to the Personal Property or the Real Estate prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected.

16. Following the Closing, with the exception of the Lender, no holder of an Interest in the Personal Property or the Real Estate shall interfere with the Purchaser's title to or use and enjoyment of the Personal Property or the Real Estate. Each and every federal, state, and local governmental agency, recording office or department, and all other parties, persons or entities, are hereby directed to accept for recording this Sales Order and any and all documents or instruments necessary or appropriate to effectuate the transactions contemplated by this Sales Order and the Asset Purchase Agreement, as conclusive evidence of the free and clear and unencumbered transfer of title to the Purchased Assets conveyed to the Purchaser.

17. Any redemption rights the Receivership Entities, if any, may have regarding the Real Estate are deemed to have been waived.

18. **Surrender of Purchased Assets.** All entities that are presently, or that as of the Closing may be, in possession of some or all of the Purchased Assets hereby are directed to surrender possession of the Purchased Assets to the Purchaser as of the Closing. Upon the Closing, each of the Receivership Entities' creditors is authorized to execute such documents and

take all other actions as may be reasonably necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist. All creditors who are in possession of certificates of title for any vehicles described in Section 1.1(b) of the Asset Purchase Agreement shall deliver such certificates of title along with applicable lien release forms.

19. **No Successor Liability.** The Purchaser is not a “successor” to the Receiver or any of the Receivership Entities or their respective estates by reason of any theory of law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for, any liability or obligation of the Receiver, any of the Receivership Entities, and/or their respective estates, with respect to the Personal Property, the Real Estate or otherwise, including, but not limited to, under any bulk sales law, doctrine or theory of successor liability, or similar theory or basis of liability, except for the assumption of the Asset Purchase Agreement and any documents related thereto. Neither the purchase of the Personal Property or the Real Estate by the Purchaser or any of its Affiliates nor the fact that the Purchaser or any of its Affiliates are using any of the Personal Property or the Real Estate previously operated by the Receiver will cause the Purchaser or any of its affiliates to be deemed a successor in any respect to any of the Receivership Entities’ businesses or to incur any liability derived therefrom within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to any of the Receivership Entities’ liability under such law, rule or regulation or doctrine.

20. Upon consummation of the Sales, the Purchaser shall not be deemed to (a) be the successor to the Receiver, (b) be the successor to any of the Receivership Entities (c) have, de facto or otherwise, merged with or into the Receiver or any of the Receivership Entities, or (d) be a mere continuation or substantial continuation of the Receiver or any of the Receivership Entities.

21. **Compliance with 28 U.S.C. § 2001(b).** Because the Purchaser's offer for the Real Estate is the highest and best offer the Receiver could obtain for the Real Estate, the best interests of the Receivership Entities' estates will be served by confirming the Real Estate Sale. The Real Estate Sale fully complies with the requirements of 28 U.S.C. § 2001(b).

22. **Compliance with 28 U.S.C. § 754.** By filing a copy of the Complaint and the Receivership Order in this matter in the district court for each district in which property of the Receivership Entities is located, the Receiver has fully complied with 28 U.S.C. § 754. As such, the Receiver and the Court have jurisdiction over all assets of the Receivership Entities in each such district.

23. **Good Faith.** The transactions contemplated by the Asset Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 9-102(a)(43) of the UCC, and, as such, the Purchaser is entitled to the full protections afforded to a good faith transferee under the UCC, including section 9-617(3)(b) of the UCC.

24. **Use of Sales Proceeds.** All net proceeds from the consummation of the UCC Sale shall be distributed to the Lender in accordance with the Loan Documents. All net proceeds from the consummation of the Real Estate Sale shall be distributed to the Lender in accordance with the Loan Documents, except as may be agreed by the Lender and the Receiver under the Third Forbearance Agreement, or any subsequent forbearance agreement.

25. **Binding Order**. This Order and the Asset Purchase Agreement shall be binding on and govern the acts of all persons and entities, including, without limitation, the Receiver, the Receivership Entities, and the Purchaser, as well as their respective successors and permitted assigns, including without limitation any trustee appointed in a chapter 11 or 7 case, and all creditors of any of the Receivership Entities (whether known or unknown), including the conduct of all federal, state, and local government agencies or departments, including any filing agents, filing officers, title agents, recording agencies or offices, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Personal Property or the Real Estate.

26. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (i) any of the Receivership Entities' chapter 7 or 11 cases, if any, or (ii) any related proceeding subsequent to the entry of this Order, shall conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order.

27. **Limitation on Liability of Receiver**. The Receiver and all persons and entities engaged or employed by the Receiver, including but not limited to Matthew English and Howard Bailey, are hereby released and absolved of and from any and all claims arising from the performance of their official duties or the administration of the estates of the Receivership Entities to date, including but not limited to any existing claim concerning or relating to any local, state, or federal taxes. The Receiver and all persons and entities engaged or employed by the Receiver, including but not limited to Matthew English and Howard Bailey, shall forever be discharged from any liability arising from or out of the receivership of the Receivership Entities,

to any holder of any existing claims against or interests in any of the Receivership Entities, or to any party.

28. **Order Immediately Effective.** This Order shall be effective immediately upon entry, and the Receiver, the Lender and the Purchaser are authorized to close the Sales immediately upon entry of this Order, notwithstanding any otherwise applicable waiting periods.

29. **Bulk Sales Law.** No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sales.

30. **Non-Severability.** The provisions of this Order are non-severable and mutually dependent. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

31. **Modification.** The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented by the parties thereto, in writing signed by both parties, expressly stating that such instrument is intended to amend, modify or supplement the Asset Purchase Agreement, any related agreements, documents or other instruments, and in accordance with the terms thereof, without further order of this Court.

32. **Governing Documents.** To the extent there are any inconsistencies between the terms of this Order and the Asset Purchase Agreement, the terms of this Order shall control.

33. **Retention of Jurisdiction.** The Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order and the Asset Purchase Agreement, all amendments thereto, and any waivers and consents thereunder, and

each of the agreements executed in connection therewith to which the Receiver or any of the Receivership Entities is a party, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sales.

Dated: May 1, 2015



United States District Court Judge

Order prepared by:

Bryan E. Minier (ARDC # 6275534)
Charles M. Gering (ARDC # 6210607)
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Counsel for Tank Operations, LLC, court-appointed receiver

AS

EXHIBIT A
(Legal Descriptions of Real Estate)

PARCEL 1

TRACT 1:

All that part of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23, Range 33, described as:

Beginning at a point 693.38 feet South and 347.77 feet West of the Northeast Corner of said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 34 minutes West 192 feet to an iron pin; thence North 67 degrees 26 minutes West to intersection with the South line of the "Johnson Tract" as shown on the L.A. Galyen Survey of January 2, 1964; thence South 89 degrees 32 minutes West to iron pin in K.C.S. Railway right of way line; thence North 17 degrees 34 minutes East along said right of way line 398 feet; thence East 27 feet; thence North 17 degrees 34 minutes along said right of way line 72 feet to iron pin; thence South 89 degrees 58 minutes 56 seconds East 127.2 feet to an iron pin; thence South 3 degrees 58 minutes 56 seconds East 161 feet to an iron pin; thence South 71 degrees 26 minutes East 370 feet to iron pin in West right of way line of Highway #71; thence South 22 degrees 34 minutes West along said Highway right of way line 180 feet to point of beginning. EXCEPT a part of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 33 West, described as commencing at a pipe at the intersection of the North line of said Southeast Quarter of the Northeast Quarter with the Westerly right of way line of U.S. Route # 71, said pipe being 59.70 feet West of the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 50 minutes 55 seconds West along said right of way line 570.96 feet for the true point of beginning of tract to be conveyed; thence South 22 degrees 47 minutes 40 seconds West with the right of way of Highway 71 a distance of 188.97 feet; thence North 66 degrees 43 minutes 38 seconds West 86.39 feet; thence North 19 degrees 20 minutes 30 seconds East 184.95 feet; thence South 69 degrees 20 minutes 35 seconds East 97.60 feet, to the point of beginning.

TRACT A:

All that part of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23, Range 33, McDonald County, Missouri, described as: Commencing at a point in the West right of way line of Highway #71, located 347.77 feet West and 693.68 feet South of the Northeast Corner of said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 34 minutes West a distance of 192 feet to the point of beginning; thence North 67 degrees 26 minutes West to an intersection with the South line of the "Johnson Tract", as said South line is described in Deed recorded in Book 151 at Page 445 in the Recorder's Office; thence South 89 degrees 32 minutes West along said South line to iron pin in the Kansas City Southern Railroad right of way line; thence South 17 degrees 34 minutes 30 seconds West along said Railroad right of way line 414.79 feet; thence East 527.52 feet to a point in the West right of way line of Highway # 71; thence North 22 degrees 34 minutes East along said West Highway right of way line 241.23 feet to the point of beginning.

TRACT B:

All that part of the Southeast Quarter of the Northeast Quarter and the North Half of the Southeast Quarter of Section 36, Township 23, Range 33, in McDonald County, Missouri, described as: Beginning at point in the West right of way line of Highway # 71 located 514.02 feet West and 1093.74 feet South of the Northeast Corner of the said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 34 minutes West along said West right of way line of said Highway 1102.92 feet; thence West 481.39 feet to the East right of way line of the Kansas City Southern Railroad; thence North 17 degrees 34 minutes 30 seconds East along said Railroad right of way line 1086.95 feet; thence East 527.52 feet to the point of beginning.

TRACT C:

All that part of the Southeast Quarter of Section 36, Township 23, Range 33, described as beginning at a point in the West right of way line of Highway #71, said point being 163.57 feet West and 250.43 feet South of the Northeast Corner of said Southeast Quarter of the Northeast Quarter of said Section 36; thence North 89 degrees 58 minutes 56 seconds West 457 feet to an iron pin; thence South 3 degrees 58 minutes 56 seconds East 161 feet to an iron pin; thence South 71 degrees 26 seconds East 370 feet to an iron pin situated in the West right of way line of said Highway #71; thence North 22 degrees 34 minutes 00 seconds East along said West right of way line of Highway #71, 300 feet to the point of beginning. EXCEPT a part of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 33 West, McDonald County, Missouri described as commencing at a found pipe at the intersection of the North line of said Southeast Quarter of the Northeast Quarter with the Westerly right of way line of U.S. Route # 71, said pipe lying 59.70 feet West of the Northeast Corner of said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 50 minutes 55 seconds West along said right of way line 270.96 feet to a found grader blade on the South line of the Missouri Highway Department tract, the point of beginning; thence North 89 degrees 58 minutes 56 seconds West parallel with the North line of the Southeast Quarter of the Northeast Quarter, 182.33 feet to an existing chain link fence; thence along said fence South 18 degrees 07 minutes West 235.61 feet to a fence corner; thence South 69 degrees 20 minutes 35 seconds East 148.60 feet to a found pipe on the Westerly right of way line of Route #71; thence North 22 degrees 52 minutes 17 seconds East 300 feet (measure 299.87 feet) to the point of beginning.

TRACT 2:

A part of the Southeast Quarter of the Northeast Quarter of Section 36, Township 23 North, Range 33 West, described as commencing at a pipe at the intersection of the North line of said Southeast Quarter of the Northeast Quarter with the Westerly right of way line of U.S. Route #71, said pipe being 59.70 feet West of the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence South 22 degrees 50 minutes 55 seconds West along said right of way line 570.96 feet for the true point of beginning of tract to be conveyed; thence South 22 degrees 47 minutes 40 seconds West with the right of way of Highway 71 a distance of 188.97 feet; thence North 66 degrees 43 minutes 38 seconds West 86.39 feet; thence North 19 degrees 20 minutes 30 seconds East 184.95 feet; thence South 69 degrees 20 minutes 35 seconds East 97.60 feet, to the point of beginning.

Common Address: 5897 State Highway 59, Goodman, McDonald County, Missouri 64843

Tax Identification Numbers:

Tract 1, A, B and C: 5-7.0-36-000-000-011.000

Tract 2: 5-7.0-36-000-000-011.001

PARCEL 2

Part of the North Half of the Southeast Quarter and the Northeast Quarter of Section 33, Township 25 North, Range 24 East of the Indian Base and Meridian in Delaware County, Oklahoma, being more particularly described as follows:

From the Southeast corner of said Section 33, run North 00 degrees 00 minutes 48 seconds East 60.00 feet; thence West 1522.50 feet; thence North 00 degrees 00 minutes 48 seconds East 2216.77 feet; thence East 50.00 feet to the point of beginning; thence North 00 degrees 00 minutes 48 seconds East 446.60 feet; thence South 89 degrees 45 minutes 00 seconds East 832.00 feet; thence South 00 degrees 00 minutes 48 seconds West 441.74 feet; thence West 832.0 feet to the point of beginning.

COMMON ADDRESS: 511 INDUSTRIAL PARK ROAD A, GROVE, OKLAHOMA

TAX ACCOUNT NO.: 000036736